1958

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill (C-37), intituled:
An Act respecting the Taxation of Estates.

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

WEDNESDAY, AUGUST 20, 1958.

WITNESSES:

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance; Mr. D. S. Thorson, Solicitor, Department of Justice; Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue; Mr. A. L. De Wolf, Solicitor, Department of National Revenue.

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62221-7—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bouffard	Hardy	Power
Brunt	Hayden	Pratt
Burchill	Horner	Quinn
Campbell	Howard	Reid
Connolly (*Ottawa West*)	Howden	Robertson
Crerar	Hugessen	Roebuck
Croll	Isnor	Taylor (*Norfolk*)
Davies	Kinley	Turgeon
Dessureault	Lambert	Vaillancourt
Emerson	Leonard	Vien
Euler	*Macdonald (*Brantford*)	White
Farquhar	McDonald	Wilson
Farris	McKeen	Wood
Gershaw	McLean	Woodrow—49.

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, August 14th, 1958.

"The Senate resumed the debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Emerson, for the Second reading of the Bill C-37, intituled: An Act respecting the Taxation of Estates.

After further debate, and—

The question being put on the motion for the second reading of the Bill, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

62221-7—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, August, 20, 1958.

Pursuant to adjournment and notice the Standing Committeee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Connolly (*Ottawa West*), Croll, Euler, Gouin, Haig, Howard, Kinley, Lambert, Leonard, Macdonald, McDonald, McLean, Monette, Power, Taylor (*Norfolk*), White and Woodrow.—21.

In attendance: The Official Reporters of the Senate.

Consideration of Bill C-37, An Act respecting the Taxation of Estates was resumed.

The following witnesses were heard and questioned:

Mr. W. I. Linton, Administrator, Succession Duties, Department of National Revenue.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

Mr. D. S. Thorson, Solicitor, Department of Justice.

It was suggested that the Report of the Committee contain a recommendation that section 18 of the Bill be publicized.

At 12.30 p.m. the Committee adjourned.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Bouffard, Connolly (*Ottawa West*), Croll, Euler, Haig, Howard, Kinley, Leonard, Macdonald, McLean, Monette, Pouliot, Power, Taylor, (*Norfolk*), Turgeon, White and Woodrow.—20.

Mr. Linton, Dr. Eaton and Mr. Thorson, were further heard and questioned.

Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue, and Mr. A. L. De Wolf, Solicitor, Department of National Revenue, were heard and questioned.

At 10.10 p.m. the Committee adjourned until tomorrow, Thursday, August 21st, 1958, at 10.30 a.m.

ATTEST.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

WEDNESDAY, August, 20, 1958.

The Standing Committee on Banking and Commerce, to which was referred Bill C-37, an act respecting the taxation of estates, met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: I call the meeting to order. Last night we got as far as section 9 on page 13 of the bill. Section 9(1) deals with the question of provincial credit. That was discussed in the Senate and it has been discussed here. My suggestion would be that it stand. My reason for this proposal is as follows. Incidentally, I think Senator Croll made some observation on it the other day. If the provinces of Ontario and Quebec have not come into the tax rental agreements, well, then, let them welter. In section 9(1) the 50 per cent credit on federal tax is in respect of property, the situs of which is in a prescribed province, which would be Ontario or Quebec, whereas under the present law the exemption is based on property on which provincial taxes have been paid, and that can be a larger area than situs because in Ontario—and I expect in Quebec, although I don't know for sure—you tax not only on situs of property but also on transmission; that is, property may be located outside of Ontario but if the transmission is in Ontario there is tax payable. I think there should be some discussion of that point with the Minister. That is why I say that section 9(1) should stand.

Section 9(1) stands.

On Section 9(2): Deduction from tax: gift taxes.

The CHAIRMAN: Section 9(2) deals with the deduction for gift taxes. I think the effect of it—and Mr. Linton can correct me—is if a man has paid gift taxes under the Income Tax Act within three years of his death and the amount of the gift is included in his estate, there is a credit with respect to the gift tax paid.

Senator THORVALDSON: Before you go on with that I was wondering if all honourable senators here are exactly clear on what the details of section 9 mean? In other words what is the difference in this bill as compared to the existing legislation. I was wondering if the committee would like an explanation from Mr. Linton.

The CHAIRMAN: As the Chairman has said, the big change is in section 9(1). What it does is change the basis of granting credits. In respect of provincial taxes it changes it from the basis of property taxed by the province to the basis of property situated in the province, and the result that the Chairman mentioned flows from it. There are reasons why that change was made, which are part of a more general policy, and I suggest that perhaps Dr. Eaton could be called to explain that.

Dr. EATON: I will try not to be too wordy on this. We will need a little background to explain it. The provincial Governments were in the death duties

field, the succession duties field, all of them. In wartime the federal Government came along and imposed a succession duty law and their rates were just roughly equal to the provincial taxes that were in force at that time. That meant an addition to death duties in Canada, with the provincial level generally the same and the federal Government coming in on top with another slice roughly equal to the provincial level. That system went on for a few years and subsequently the federal Government, instead of having a set of taxes paralleling the provincial Governments, doubled their rates. The federal rates were doubled all across the board and a credit was given in respect of the provincial taxes. That was just a mechanical device for putting an overall level of duties on the people of Canada. That is the general pattern.

Now I jump from there into the present situation where eight of the provinces have rented these taxes to the federal Government. Ontario and Quebec claim the right to impose their own, and do impose their own. So in respect of Ontario and Quebec the law says we will abate our tax, federally, up to one-half, that is, recognizing the general principle that you have one-half the field, and we have one-half of the field. So in Ontario and Quebec the federal rates are abated by one-half.

Now we come to the situation of these two provinces, Ontario and Quebec, who quite rightly under their law have the right to tax property situated say in B.C., and the new rules of abatement here say that the federal tax will not be abated to a person in Ontario in respect of property situated in B.C. Let me take this situation: The federal Government has rented that field from B.C., but if B.C. had been in there by itself B.C. likewise would have taxed that property situated in B.C., and it would have devolved upon Ontario to have given a credit against Ontario tax in respect of that B.C. tax. Now, the federal Government is in the place of, if you like, B.C. in levying a tax on property situated in B.C., a tax imposed by the province of domicile of the deceased, Quebec or Ontario. So we are saying under the new rules that it does not devolve upon the federal Government to give relief to Ontario taxpayers in respect of that property situated in B.C. because we have the prior right in effect in the place of the province to levy our tax there. Now, if Ontario and Quebec—I am not saying they should or should not—but if they want to give relief they can abate half of the federal tax that B.C. would have imposed had we not rented the field from them, and that is the reason for the absence of the abatement of the 50 per cent to Ontario estates in respect of property situated in another province.

Senator LEONARD: There was no reciprocal agreement between Ontario and any other province and Quebec and Nova Scotia when the tax rental agreement came into effect; there was no obligation.

Mr. EATON: No obligation, I agree.

Senator LEONARD: The deal that the federal Government made with British Columbia affected not only this right to tax property in British Columbia but also the right to tax property in Ontario belonging to a person domiciled in British Columbia. Does this not arise from the fact that there was double taxation in effect when the tax rental agreements came into effect? But it is hard for me to see the justice of the federal Government now allowing the tax that has to be paid by a resident of Ontario and Quebec which is legitimately paid, and they have the right to enforce it merely because of a tax rental agreement made with British Columbia or some other province, which agreement was based on this situation that there was this federal tax.

The CHAIRMAN: Mr. Eaton, I wonder if you would address yourself to this: Under the present statute the basis of abatement is on the basis of property taxed?

Mr. EATON: That is correct.

The CHAIRMAN: Now, what is there that justifies in your opinion the change from that basis to the basis proposed in the bill? Doesn't the situation that is described as between British Columbia and the federal authority, and British Columbia and Ontario, exist at the present moment?

Mr. EATON: That is right.

The CHAIRMAN: And yet you are using that as a basis for changing the law?

Mr. EATON: That is right. The policy on this has definitely changed from the way the law is today, and it was realized this was more generous than the new system. Now, answering a little further, as Senator Leonard remarked, I will admit that what I am saying is putting forward a presumption that Ontario and Quebec would remove double taxation, and I am saying to you this, that it is generally accepted among,—well, the United Nations comes forward with this proclamation, that as a general rule it is the country of residence, of domicile, which gives relief from double taxation, and the country of source or the place where the property is situated, that they have the prior right to the first crack at the tax. That theory is acceptable to the federal Government, and it has accepted it, and that is my suggestion if Ontario and Quebec are going to remove double taxation on their people. That is the rule that is generally followed among nations. The federal Government is operating or proceeding on that assumption, that Ontario, in fact, would not net any tax from that property taxed in British Columbia if British Columbia had already taxed it.

Senator LEONARD: Dr. Eaton, you are trying to teach lesson to them by imposing a double taxation yourself.

Dr. EATON: No, we are not influencing them in any way in that regard.

Senator BOUFFARD: You are trying to get the provinces of Quebec and Ontario to abandon that field of taxation?

Dr. EATON: No, we are not trying to do that. It is entirely up to the province if they want to remove that double taxation, but the law says that the federal Government is not going to abate that because we are already abating it in British Columbia on account of the tax rental agreement.

The CHAIRMAN: I would say that what you are trying to do is to move Quebec and Ontario by action rather than by persuasion.

Dr. EATON: No, we are not trying to move them at all.

Senator BOUFFARD: What is the policy in the United States? I understand that nearly every state there also has an estate tax law.

Mr. LINTON: I am not too familiar with the relationship between the states but there is a credit granted by the federal Government in respect of the estate taxes. What the states do as between each other I do not know but I think the federal credit depends on what was paid to the states.

The CHAIRMAN: A great many of the states have a reciprocity arrangement for the avoidance of double taxation.

Dr. EATON: Mr. Chairman, may I say just one more word, just to remove the idea of what might appear an anomaly. You will find that the law says we will abate federal tax by 50 per cent in respect of property situated outside Canada taxed by a provincial Government. Now you might say that is an anomaly. The answer to that is this: Ordinarily the provincial Government does not give a credit in respect of taxes imposed by a foreign Government at the top level, ordinarily the province does not in practice give relief from that, and because of that the federal Government steps in and says we will give an abatement of one-half in respect of that property situated outside Canada but not necessarily on property situated inside.

Senator LEONARD: And it is only given to a person within the prescribed province, is it not?

Dr. EATON: Yes.

Senator LEONARD: If it is given to somebody in Alberta the federal Government does not allow that.

The CHAIRMAN: That is right.

We have had an explanation of section 9(2). It is remedial and it is the present law, so that is carried.

Section 9(2) carried.

Section 9(3) deals with deduction from tax of foreign taxes and I think that is clear.

Section 9(3) carried.

Section 9(4)—deduction from tax: notch provision.

Any questions on that? This gives the assurance of the $50,000 deduction or exemption.

Section 9(4) carried.

Now we come to subsection 5 of section 9, and this simply makes sure that you get the exemption and that the estate exemption will never be less than this $53,056.

Mr. LINTON: That is the limit at which this half notch would apply. Beyond that it would not apply because the whole tax would not reduce the estate below $50,000.

The CHAIRMAN: Any other questions?

Senator WHITE: Mr. Chairman, I want to ask Mr. Linton this question: if the estate was $54,000 and was going to children over 21 years of age they would only have a $40,000 exemption and then you would pay a tax on $14,000?

Mr. LINTON: That is right.

Senator WHITE: How do you justify that?

Mr. LINTON: The point, sir, is that the tax on an estate of $54,000 will never be more than $4,000; so, the idea of this notch provision is to prevent an estate from ever being reduced below $50,000 by tax. An estate of $53,000 or $56,000 is never reduced below $50,000.

Senator WHITE: But take an estate of $60,000: the tax on $20,000 is $2,600. On that estate $40,000 is exempt, and you pay $2,600 on the balance.

Mr. LINTON: Yes.

Senator WHITE: That does not bring it down to $50,000.

Mr. LINTON: No. This provision is to prevent an estate of $51,000 from being taxed at perhaps $2,000 leaving a net estate of $49,000. If the tax would reduce the estate below $50,000, then only half of the difference between $50,000 and the value of the estate is taxed.

Senator WHITE: But you are still giving a $50,000 exemption in one case, and $40,000 in another.

Mr. LINTON: No, I really do not think so, because an estate under $50,000 does not pay tax.

Senator WHITE: But, say, an estate of $60,000 gets a $40,000 exemption.

Mr. LINTON: Yes, and pays tax.

Senator WHITE: Whereas here, you are exempting up to $50,000.

Mr. LINTON: In that one you are exempting up to $40,000.

Senator WHITE: But on a $53,000 estate you are exempting up to $50,000.

Mr. LINTON: As long as the total estate is less than $50,000.

Senator WHITE: There is a certain unfairness there.

Mr. LINTON: I am afraid I don't see it.

Senator WHITE: On the estate of $50,000 no tax is paid, but on the estate of $60,000 there is a tax on $20,000.

Mr. LINTON: That is right.

Senator WHITE: That hardly seems fair, that a $60,000 estate is going to be taxed on $20,000, whereas a $50,000 estate has no tax at all.

Mr. LINTON: I see your point, but that is the way it works.

The CHAIRMAN: The way Mr. Linton justifies it is this: because the present rate of tax is such that the balance of the estate would not be reduced below $50,000 it is all right. But of course the rates could change and you would have a different situation.

Senator WHITE: If you had a basic exemption of $50,000 instead of $40,000, I could understand that.

Dr. EATON: May I say that $50,000 is not a true exemption, but is an exclusion. Everything below that is out, and everything above it is in. This is just a dividing line, as it were, between the sheep and the goats: the sheep are below $50,000 and the goats are above.

Senator HOWARD: Mr. Chairman, before we pass on, may I point to the unfairness of the credit situation as to foreign property? Take the example of the man who has $100,000 worth of property in the United States, and property of the same value in Canada; let us say the American property is located in New York or New Jersey, or one of the close States. He would pay taxes on half the amount, which would be $9,500. When he transfers the $100,000 and adds it to the $100,000 in Canada, the tax is $44,000. It seems to me that instead of deducting the tax paid, you should deduct at the same rate as the tax in Canada, otherwise it is unfair.

Dr. EATON: The tax credit principle is to remove double taxation, and to the extent that the tax has been paid on that property in the United States, included in the Canadian estate, the credit is given of sufficient amount to remove double taxation; and the smaller amount paid in the United States is offset against this. You remove double taxation, but it does not say that you are going to remove Canadian taxes completely on that which is taxed abroad. I mean, it is just to the extent of the amount which will remove double taxation on that which is taxed in Canada.

Senator HOWARD: But by increasing the rate do you not consider that double taxation?

Senator HAIG: No.

Senator HOWARD: Then, instead of saying "double", why don't you say, "easing taxation"?

Dr. EATON: On a person domiciled in Canada you take the total world estate, then you proceed to give a deduction for the tax paid abroad, and that removes double taxation. The fact that that property is counted in the estate does not make the rate higher.

Senator HOWARD: So it is still double taxation.

Senator CROLL: It is not double taxation. If I have a similar estate in this country I would pay the same tax. So what difference does it make?

Senator J. J. CONNOLLY: We have really changed the rate, and set our own rates.

The CHAIRMAN: Well, we have dominion over ourselves and can regulate the rates.

Subsection (6) is the definition section.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (7) is, in a sense, a definition. It is the net amount of taxes in the other country that may be deducted.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (8) deals with the situs of property. This is new. Should we have a statement from Mr. Linton?

Mr. LINTON: To carry out the principle that Dr. Eaton explained, of applying these provincial credits on the basis of situs, it was necessary to have some means of determining what the situs of the property was. The obvious thing would be to use the ordinary common law rules, as a number of people suggested. The reason we did not do that is that these common law rules are very difficult things to interpret and apply. The case law behind them is anything but clear. And furthermore, they require a great deal of information to be submitted, which is difficult for an estate to gather. With stocks of companies having multiple transfer conditions, in some cases it has been held that the place where the transfer is finally accomplished is the situs, and that cannot be known at the date of death. In cases of certain deeds the question of whether they are under seal becomes important,—which is not easy for many people to determine, if the property of the deceased is not in their custody, immediately, but is in a box or somewhere else. So it was decided that, for ease of administration by the executor, and also for ease of administration by the department, it would be well to have defined situs as we have it defined in most of the treaties with foreign countries. The rules we used were adapted from these treaties as far as feasible, but some of these rules were not designed to get property distinguished between one province and another, so these rules in subsection (8) were added to the applicable rules that had been used for the treaties to distribute the property among the provinces; and as far as possible we tried to make the rule such as would generally coincide with the common law rule, that the variations would be as limited as possible.

The CHAIRMAN: By establishing these statutory rules with relation to situs you are immediately in conflict with the provincial rules, which are the common law rules.

Mr. LINTON: That is so.

The CHAIRMAN: Yes.

Senator LEONARD: Mr. Linton, if you were allowing one-half of the tax paid in Ontario and Quebec, which are the two prescribed provinces, would subsection (8) be necessary at all?

Mr. LINTON: Do you mean if we were allowing it on the old basis as to whether the province is taxed or not?

Senator LEONARD: Yes.

Mr. LINTON: No, I don't think it would.

Senator LEONARD: It is consequential upon endeavouring to apply the rule of tax credit and reciprocity, which Dr. Eaton explained, to Ontario and Quebec.

Mr. LINTON: That's right.

Senator LEONARD: This will have to stand.

The CHAIRMAN: Is that the reason why subsection (8) is in—because of—

Mr. LINTON: Because of this system of credit on situs that Dr. Eaton explained?

The CHAIRMAN: Yes.

Mr. LINTON: Yes, sir.

The CHAIRMAN: Well, we will stand section 9(1).

On Section 10. Minimum tax.

The CHAIRMAN: We don't have to spend much time on this. If your tax is less than $25 you don't have to pay anything.

Senator HAIG: It helps a good many of us.

Section 10 agreed to.

On Section 11. Returns.

The CHAIRMAN: In dealing with the question of returns is there any material difference between the provisions you now have and what you provide for in this bill, Mr. Linton.

Mr. LINTON: I don't think there is any fundamental difference between what is required under this bill and under the old law except that the returns will demand somewhat different information, largely again based on those situs provisions.

The CHAIRMAN: I would draw the attention of the committee to the fact that under subsection (4) there is provision whereby the executor is required at the time he files the return of information to estimate to the best of his knowledge the amount of tax. I presume that is to facilitate an earlier payment of some money on account of tax. Is that right?

Mr. LINTON: It is an endeavour to carry into this act the general principle that is contained in the Income Tax Act whereby a person should estimate his own tax. The forms under the old Succession Duty Act were designed to do this too, but the calculations were so complicated we never seriously expected anybody to do them. It is thought here that in most cases it will be quite feasible to do it.

Senator CONNOLLY (*Ottawa West*): Will the forms provide space for doing it?

Mr. LINTON: Yes.

Senator MACDONALD: It will be very difficult to do that because an executor does not know what the net value of the estate is likely to be. He does not know what the debts are or what outstanding claims there are.

The CHAIRMAN: It says "to the best of his knowledge and ability".

Senator MACDONALD: Yes, to the best of his knowledge and ability but it is a pretty wild guess, I would think.

The CHAIRMAN: It is not an estimate but a "guesstimate".

Senator MACDONALD: I do not see how that will assist the department in any way. When the department has made a correct assessment they will go back and say "How close did the person come to it in the first instance?"

Mr. LINTON: We hope that in a great many estates there will be an accurate estimate of tax. If it is a complicated estate with doubtful valuations, it will probably not be accepted. However, there are a good number of estates that involve, say, a large farm, an insurance policy and normal debts. Those should be quite feasible.

Senator MACDONALD: I don't see how it will assist in the administration of estates in your department. You will not assess an estate until you get the final returns.

Mr. LINTON: It does this. It enables the person filing to give an amount and that can be used both in putting up security or asking for releases, and that sort of thing. It gives them a figure that they can use and we can use as a tentative basis for dealing with the estate until the final figures are established. Perhaps it will not do too much good but on the other hand it will not be too difficult to do. The old one was too difficult to contemplate.

Senator MACDONALD: I can see it might be of some help in the case of putting up securities.

Senator ASELTINE: The procedure followed by the Director of Succession Duties in Saskatoon is this. The return is filed and they make an estimate of the amount of the duty, and we pay it subject to more being paid later on. There might be a refund, of course. Why is this section necessary?

Mr. LINTON: This would just carry that procedure to the point where the estate would say, "This is what we think is our estimate and should be paid." It should mean that with respect to ordinary estates they will be paid quicker.

Senator ASELTINE: Well, we always wait for your office.

Mr. LINTON: You would not have to here. I think it will speed it up.

Senator MACDONALD: I think you will still have to wait, Senator Aseltine.

Senator CROLL: But the Government will get the money a little quicker.

Senator EULER: If they underpay are they charged interest after the first six months?

Mr. LINTON: Yes.

Senator EULER: And if the overpay?

Mr. LINTON: There is a refund interest of 3 per cent, or 5 per cent if it results from an appeal.

Senator EULER: "Heads I win, tails you lose".

Senator HAIG: I think it is a fine idea to make up the statement. It will give the person figuring out the tax an opportunity to find things out. He may suddenly find he has omitted to put something in. That is what happens in the case of making out an income tax return. You suddenly remember certain things you forgot. Perhaps the lawyer will say to the person, "Here, you didn't take 20 per cent off for this Canadian company or you did not allow a depreciation for something else." I believe you will find the same thing will happen in making up the estate taxes. I have made up a good many of them myself and I have advised the person what I thought his duty would be and what he would have to raise. It is at that time that you go into the assessment more particularly. This will bring out a lot of innocent omissions.

Mr. LINTON: There will be a greater tendency for people to claim the exemptions they are entitled to. Some of these exemptions, like normal reasonable gifts, and even exemptions applying to children, cannot be known by the department unless they are claimed or they appear in some other document. If a person has to calculate the tax on these forms, he is more likely to see these exemption provisions with the result that the department will get more accurate information both for and against the department.

Senator WHITE: You spoke about deductions with respect to children. What evidence will you require as to whether these exemptions apply? Will you need affidavits or birth certificates or marriage certificates or what?

Mr. LINTON: Generally I would say not unless there was some reason to suppose there might be a wrong claim, possibly in the case where the child seemed to be just at the point of reaching his birthday. Generally, however, we would take it as it is now. We do a certain amount of checking from income tax returns in regard to children where they are claimed as dependents, and we might ask for some evidence where a child is claimed for estate tax was not claimed for income tax.

The CHAIRMAN: Anything further?

Section 11 agreed to.

On Section 12—Assessment.

The CHAIRMAN: There do not appear to be any changes here except subsection 5, of which the explanatory note says it is new in part. Would you care to say something about that, Mr. Linton?

Mr. LINTON: Subsection 5 now provides that there is a limitation on re-assessment. Under the present Succession Duty Act the Minister may re-assess at any time; here, he can only re-assess after a period of four years if there has been fraud or misrepresentation, or assets subsequently discovered. You cannot re-assess for re-valuation, or anything of that kind. So that this act imposes a closure on re-assessments which the old one did not.

The CHAIRMAN: I notice the language at the bottom of page 17 says, in paragraph (a) "or otherwise failed to disclose any material fact". Now, you said that if there was non-disclosure of some property, or the property was discovered afterwards, which I can quite understand, you go and assess it after four years, but when you say "or otherwise failed to disclose any material fact", it may be some fact in relation to property which was disclosed, and it may ultimately prove to be a material fact, but not necessarily that the executor or the successor had any idea that it was a material fact, and yet you would have the same opportunity.

Mr. LINTON: I think we would have to show it was a material fact, and I should think a material fact at the relevant time, that is, the date of filing.

The CHAIRMAN: That is imposing a very substantial onus.

Senator CROLL: Is not a fact a fact—something that either was or was not? It says a material fact. They are not looking for non-consequential things, but something he should have disclosed and knew it.

Mr. LINTON: That is right.

Senator BOUFFARD: No, not necessarily.

Mr. LINTON: Not necessarily, although that is the kind of thing we are getting at.

Senator CROLL: How can it be a material fact without his knowing if it exists?

Mr. LINTON: Surely, he could not fail to disclose something he didn't know.

Senator POWER: The fact that the deceased controlled a company and had not disclosed it, would that be a material fact—if he controlled a corporation?

The CHAIRMAN: Well, under the scheme of this act I would say yes.

Senator POWER: Well, that could very easily be forgotten by not being recorded.

The CHAIRMAN: The executor might not know about it.

Senator POWER: He might not know that he controlled a corporation as defined by this act, and the proceedings would go on for a while till the department found out some other way that actually the deceased controlled the company, and I would say that is a material fact.

The CHAIRMAN: There is no question about it.

Mr. LINTON: I do not know that it is a fact he is required to disclose unless somebody asked him.

Senator POWER: It would not be a material fact unless he was asked?

Mr. LINTON: No, there is nothing requiring him to disclose that particular fact unless he is asked.

Senator BOUFFARD: It would be a misrepresentation, anyway. It is not necessary to know about it.

Senator MACDONALD: It would not be fraudulent.

Mr. LINTON: It does not have to be fraudulent.

Senator LEONARD: May I ask Mr. Linton, Mr. Chairman, if these words have been in the statute for some seventeen or eighteen years?

Mr. LINTON: No, they have not.

The CHAIRMAN: This is new.

Senator LEONARD: There have been similar words in the law to the effect that it does not discharge him from failure to disclose material facts. Have you ever had any difficulty or trouble with the executors in that regard?

Mr. LINTON: Under the wording of the old section we have had some quite startling cases of mis-declarations which seem very hard to pursue under the old act.

Senator LEONARD: Have you then changed the wording so as to overcome that difficulty?

Mr. THORSON: The present law is contained in section 36 dealing with certificates of discharge, reading as follows:

> (3) Such certificate shall not discharge any person from his duty in case of fraud or failure to disclose material facts and shall not affect the rate of duty payable in respect of property, the subject matter of the succession . . . .

And then it continues.

Senator LEONARD: Is there any change in substance and meaning?

Mr. THORSON: That language is the same.

Section 12 Agreed to.

On Section 13—Payment of Tax by Executor.

The CHAIRMAN: We have had some discussion on the increase in responsibility or liability of executors under this bill as against the present act. I think possibly since the section is new to some considerable extent that we should have a summary of it from Mr. Linton as to the position of an executor under the bill, and the extent of his liability.

Mr. LINTON: Could I perhaps make a statement so as to embrace the payment of the tax by the various people as this and the next two sections are very closely interwoven?

The CHAIRMAN: Well, we could take sections 13 and 14, which involves the liability to pay tax by executors and successors.

Mr. LINTON: The tax is divided into the tax on two different categories of property. One is the property which is under the control of the executor, and the other is the property which is not under his control. In respect of the property under the executor's control he is required to pay the tax as a debt of the estate charged upon the mass of the estate as a debt. There is a secondary liability as a surety for that payment by the executor on the successors in proportion to the duty applicable to each of them. Now, with regard to the property that passes outside the hands of the executor the primary liability is on the successor but the executor is required to pay on behalf of that successor to the extent of any property that is in his hands which passes to that successor.

The CHAIRMAN: Is that the limit of the liability in the case of property which is not included property?

Mr. LINTON: The limit of the executor's liability?

The CHAIRMAN: Yes.

Mr. LINTON: The liability of the executor in regard to the non-included property is such as I have described, but he is relieved from any liability that may arise after he has distributed the estate or settled the duty, if he can show that he used due diligence to try to ascertain the facts and deal with the property as required.

The CHAIRMAN: There is a provision that the Minister can require the executor to pay tax. Now, what is the extent to which he can require? Can he require him to pay every amount of tax that is payable?

Mr. LINTON: No, he can require him to pay all the property that goes through his hands, and the tax on property that does not go through his hands to the extent of the property of the successor getting that non-included property.

The CHAIRMAN: And it is in these provisions too that where the executor pays tax that the successor should pay that he has a right to recover from the successor out of the assets of the estate that might be going to the outside successor.

Mr. LINTON: From those of outside successor, yes.

Senator WHITE: Mr. Linton, if the executor has no assets in his hands belonging to a successor who gets property outside the will then he is not liable is he?

Mr. LINTON: That is correct.

Senator CONNOLLY (*Ottawa West*): What is the correct position of the executor who has non-liquid assets in his hands and when the successor has property, whether it is liquid or otherwise? I suppose in a case of, say, real estate the executor presumably would have power to sell, a power either conferred by the will, or is it conferred here by the bill as well?

Mr. LINTON: I think he would have power to realize on that but in practice I think he would go to the legatee who is getting that property and say, "Now I have to hold back this property until this tax is paid, do you want to pay it to get the property intact?" And I think generally that is what would happen.

Senator CONNOLLY: It occurs to me now that if there is no power of sale contained in the will in connection with real estate and the executor had to liquidate it to comply with the succession duty requirements I think there would probably be a cloud on the title.

Mr. LINTON: I am not sure of the answer to that, but if that is so and he had not the power to sell the property then we would of course have a right to attack that successor directly for his tax if an impediment of that kind should arise in collecting from the executor.

Senator CONNOLLY: The onus is on the executor and you are trying to push him to discharge that and if he says I cannot sell, I cannot find a buyer, what then?

Mr. LINTON: Well, if that is true and he cannot sell for some reason then he would certainly be barred from transferring that property to the successor, but if he could not sell it then I think our position would be that we would have to go to the successor and attack him for the tax.

Senator CONNOLLY: The onus is on the executor to pay, it is not to withhold.

Mr. LINTON: That is true.

Senator BAIRD: If any of these amounts are outstanding over six months would you charge him five per cent interest?

Mr. LINTON: We would charge the five per cent interest rate against the successor, and the executor's liability has on behalf of a successor for tax or interest would never exceed the value of the property he has in his hands going to that successor.

The CHAIRMAN: Of course the executor's liability is not a personal liability unless he has mismanaged, so he is liable to the extent that he has assets in the estate.

Senator LEONARD: Mr. Chairman, I think where the executor has done everything that is required under this bill and has satisfied the Government that he has done so he is then entitled to a certificate of discharge, and in order to crystallize my own thinking on it I did write out a draft provision which I have here and which I am going to read simply to suggest a kind of basis for a certificate of discharge. It follows some of the present provisions of the Succession Duty Act, and it would go as follows:

> Where there is no tax payable or where the tax has been paid or secured to the satisfaction of the Minister and where the Minister is satisfied that the executor has exercised all due diligence and taken all reasonable precautions to insure that the amount so payable by him was paid in full the Minister shall, if requested by the executor, give a certificate to that effect which shall discharge the executor from any further claim to tax.
>
> (2) The Minister shall not be bound to grant such certificate until the expiration of four years from the time at which he has the right to re-assess.
>
> (3) The present provision that such certificate shall not discharge any person from the tax in case of fraud or failure to disclose material facts . . .

again following the wording of the section.

Mr. LINTON: I would like to explain, Mr. Chairman, why we did not put in a certificate-of-discharge provision. We thought that the four year limitation as it is in the bill would work much the same way, but automatically, so that everyone would benefit by it. A certificate of discharge benefits the person who seeks it and in our experience comparatively few do seek it, so a large body of estates under that system do not acquire the benefits of it whereas under this four-year rule everybody would acquire it automatically. It would save a certain amount of paper work and would tend to benefit everybody against what occasionally happens now when you find that a certificate of discharge is sought when something has been hidden to make sure that when the facts come out the department will not act on them. I can give you a sample of a case where a certain property was in question and inquiries were made as to whether the property was to be sold and the answer came that it was not to be sold, so the discharge was issued and, the day after, the property was sold at a very much higher price than was alleged or admitted would be the value. There is a tendency to seek a certificate of discharge by a person who is trying to get clearance when something is not disclosed whereas the four year limitation here works on behalf of everybody. That is the rationale.

Senator CONNOLLY (*Ottawa West*): I think there is the other case, and I am not speaking now of the trust company executor, but rather of the individual executor who has carried out his responsibility and where there is no question of fraud, no question of valuation of assets. It is like a man who pays his income tax, he likes to have a finality to it each year, and I think individual executors feel that when they have their certificate of discharge in that case this is not a potential liability hanging over the heads, perhaps, of their executors. I think there is some sense, Mr. Chairman, even with the automatic discharge after four years in the absence of fraud, making it possible for the executor, and I am thinking in this case of the individual executor who usually does not like to take on these jobs but does it and if he can get discharged he derives a sense of security from it.

Mr. LINTON: I think he would have no greater security than he has in the automatic provision.

Senator CONNOLLY (*Ottawa West*): After four years though.

Mr. LINTON: But the suggestion that Senator Leonard made was for a four year period anyway.

Senator LEONARD: I was thinking of the fact that there are many clear-cut cases where the executor has completed all his work in two years and is ready to be discharged.

Mr. LINTON: We have the same provision now, in the Succession Duty Act, after one year.

Senator LEONARD: The Minister may say, "Let it go the four years and then you are clear," but there must be a large number of automatic cases where both parties would like the noose to be taken away from them. In any event this suggestion of mine only make it permissible.

Mr. LINTON: On the point of them wanting it, it is surprising how few seek it. When the Succession Duty Act started back in 1941 we presumed this would generally be wanted, and we stocked our various offices with supplies accordingly. Upon re-examining the supply situation in Montreal in respect of certificates of discharge a few years later, we found we had enough at the rate of consumption to last something like 200 years.

The CHAIRMAN: We had better start using them.

Senator THORVALDSON: Would they apply to corporate trustees?

Mr. LINTON: The corporate trustee tends to ask for them more than the individual.

Senator CONNOLLY (*Ottawa West*): That is due to the fact that the individual executor who goes to a lawyer wants to get rid of the estate as soon as possible. Sometimes he forgets, but you do get the business-like type who wants to have a discharge.

The CHAIRMAN: Why shouldn't he be able to get a discharge, if he has obligations and liabilities under the statute?

Senator POWER: If he has a lot of squabbling successors, he could get his discharge and then say "to hell with it".

The CHAIRMAN: The moment he has his discharge he can tell those beneficiaries he has nothing more to do with the estate.

Mr. LINTON: It seems to me, if we do this and issue a discharge in the terms of Senator Leonard's proposal, he is really not relieved of any liability in any event.

Senator LEONARD: He is relieved to the same extent that he is now.

Mr. LINTON: Yes, but if there is any misrepresentation or fraud, the thing does not operate.

Senator LEONARD: It has never operated.

Mr. LINTON: No.

Senator LEONARD: This is, practically speaking, the stamp of approval that everything is in order and has been done.

Senator BOUFFARD: Mr. Linton, I think you would find a discharge most useful in taking a lien on propery and registering the lien against the propery. How would the lien disappear if you did not allow the discharge to be registered? The lien would never disappear.

Mr. LINTON: Would the discharge be registered as a discharge of lien? I don't know that the registrars would register our documents—certainly they pay no attention to our consents to transfer.

Senator GOUIN: I have one question to ask, Mr. Chairman. There is no presumption of fraud, even if some facts have not been disclosed.

Mr. LINTON: Oh no.

Senator GOUIN: The section in the act does not presume fraud.

Mr. LINTON: No.

The CHAIRMAN: Senator Leonard, we have had a full explanation of these two sections. Do you wish to have any part of them stand for the purpose of dealing with that question?

Senator LEONARD: If the provision for certificate of discharge is to be made, it would have to be an entirely new addition, as I see it.

Mr. LINTON: I would think so.

Senator LEONARD: If the matter may be left to the departmental officials to consider it further, and if they have something they could do to meet our request, I think it would be very well received.

Sections 13 and 14 agreed to.

On Section 15—instalment payments.

The CHAIRMAN: This section deals with the payment of tax in special cases, in the case of income rights, annuities, term of years, and provides for instalment payments. This is new. Mr. Linton, would you care to summarize this section?

Mr. LINTON: This provides that a successor who is liable for his own duty and who benefits from something of the nature of an annuity can pay the tax on that benefit in six annual instalments. That is provided for in paragraph (a).

Paragraph (b) provides that where an asset of an estate is an interest in expectancy, for example, where the deceased was a remainderman of another estate, so that it did not fall in until the death of a life tenant, if the successor to that property has to pay his own duty he can delay the payment of that duty until the interest does fall in at a lower than normal rate of interest.

The CHAIRMAN: If the remainderman in those circumstances elects to defer payments, the interest accumulates.

Mr. LINTON: That is right.

The CHAIRMAN: Even though he is not going to enjoy the property until the life tenant dies.

Mr. LINTON: Yes sir, but it will be valued at a discounted amount. So, if he pays at the date of death and does not elect to take advantage of this, he pays a tax based on a discounted amount of value. As the date of falling in approaches, the actual value of the thing increases, and so the tax with interest he has to pay also increases.

The CHAIRMAN: The value may increase, depending on whether there is real property, for instance, and how the life tenant has used that property. It is conceivable that the property may be worth less when he finally takes it.

Mr. LINTON: Wouldn't the life tenant be required to pay for the normal upkeep charges?

The CHAIRMAN: I am talking about the value of the property itself. If it is a farm property, buildings may have depreciated in value, machinery and equipment may be run down, and the land itself may be worth less because of the lack of proper husbandry. However, that is the choise the remainderman has to make: he can take the value at death, and pay tax then on this instalment plan or wait until he enjoys the estate and take his chances on having it valued at that time.

Mr. LINTON: No sir. It is valued at the date of death, and is not re-valued. The interest accrues on it, as the date of realization comes closer.

Senator BRADLEY: So it is a discounted note idea?

Mr. LINTON: Yes.

Senator MACDONALD: I fail to understand why by paragraph (a) the successor who receives an annuity pays the tax in six annual instalments,

whereas the successor who gets an annuity under the provisions of a will has to pay the tax on the capitalized value forthwith.

Mr. LINTON: The reason for that is that the tax on the property devolved under the will is a debt of the estate payable just as any other debt of the estate, and so that successor doesn't have to pay his tax; that is part of the estate tax principle that is embodied here.

Senator MACDONALD: The capitalized part of an annuity not only controls the estate, it does not form part of the estate. . .

The CHAIRMAN: It is not included property.

Mr. LINTON: Not included property; and so, that successor must pay his own.

Senator MACDONALD: How does that work out in practice? Give me an example.

Mr. LINTON: Supposing you have an estate that has a pension payable to the widow; the deceased, thinking that the widow was amply provided for by that pension, left the rest of his property which was an annuity, payable to the daughter, and the residue went to his son. The tax on the widow's pension would be payable by her. She gets nothing from the estate proper—that is non-included property. The tax on that pension is a liability of hers, and she can elect to take advantage of this provision. But the annuity payable from the assets of the estate to the daughter is included property, and the tax on that is like the tax on the residue—simply a debt of the residue—and the tax would be payable by the residuary legatees in effect.

Senator MACDONALD: I don't follow it very clearly. Why would you bring the widow's annuity into it whatsoever? It has nothing to do with the estate. The annuity has been set up more than three years prior to the death of the deceased, and does not enter into the estate.

Mr. LINTON: It depends on what kind of annuity it is. If it is an annuity purchased by the deceased for her more than three years prior, that is all right, but the instance I was supposing was that of a pension payable on his death, as a result of his employment, which would be taxable. The question of whether the annuity is taxable is of primary importance; but assuming it is taxable, this operates in favour of the widow in the case in question, but not in favour of the daughter in the case in question. That is why I used the word "pension", which would clearly be taxable.

Senator MACDONALD: But the capitalized value of the annuity in this instance is not added to the value of the estate?

Mr. LINTON: It is added for arriving at the tax. But the liability for the tax is shifted.

Senator MACDONALD: It is added to the estate in order to compute the tax. Therefore, I come back again to the question: why should the widow be required to pay immediately after death, when other recipients who have an annuity under the will don't have to pay forthwith?

Mr. LINTON: Well, there are two reasons. The annuitants under the will do not have to pay; the bulk of the estate pays it; it does not really fall on an annuitant; and when somebody gets this kind of property outside of the estate proper there might be a hardship if they did not have the time-payment privilege in finding that money.

Senator MACDONALD: There might also be a hardship if the annuity were the larger part of the estate, and going to one person. The payment forthwith would be a hardship there.

Mr. LINTON: But not a hardship on that person. It might be a hardship on the bulk of the estate as a whole.

Senator MacDONALD: But the one person is going to receive the bulk of the estate.

Supposing the annuitant is to receive the bulk, and if the payment is to be made forthwith, it is going to work a hardship on the estate and just as directly on the recipient.

The CHAIRMAN: There is a provision in the section for the minister to defer payment in cases of hardship,—by paying interest of course.

Mr. LINTON: I would think that the cases where someone made a will by which all of an estate was bequeathed by way of annuity would be rare, though it could happen.

Senator MacDONALD: It might be rare where a whole estate is left by annuity, but it might be the larger part of the liquid portion of the estate.

Mr. LINTON: But that annuitant does not have to find the money out of the annuity; it would come out of the capital behind the annuity.—which would shrink the annuity.

Senator MacDONALD: Extension of payment would come in under another section, where there is relief in case of hardship.

Mr. LINTON: It could. It is in the minister's discretion, as to what hardship is.

Senator LEONARD: I think this is the section as to which representations were made to us by, I think, all the witnesses who were here, that hardship resulted from the fact that payment of the duty on the capitalized value of an annuity in six instalments would fall very heavily on the annuitant; in some cases it might amount to complete confiscation of the annuity if the annuitant died within a short period of time. It was under this provision that the suggestion was made, by the Canadian Chamber of Commerce, and, I think, endorsed by some of the others, that if a method could be worked out whereby a rate might be calculated on the life expectancy, and then applied as against each individual payment, on the pay-as-you-go method, equity would be done to the annuitant who died at too early a period; and on the other hand the annuitant who lived longer and thereby gained the benefit of additional payments would not be unduly penalized and the overall revenues of the Government would not suffer. In considering that I have no doubt that the department finds a good deal or difficulty in applying such a tax, although if they come to work it out I think that would be a very excellent way. It struck me that it then becomes rather an income tax instead of a capital tax.

I have a suggestion to make which, I think, may be worth some consideration, directed particularly at the hardship of the excess payment related to the amount of the annuity. No doubt the department has considered it, but I would like to put it forward and at any rate have their views and the views of the committee. It would be an addition to section 15, and it would read:

"Where such equal annual instalments would exceed 15 per cent of the annual sum payable under such income right, annuity, term of years or life, or other similar estate, the minister may defer the time for payment of such excess for such period as he may deem equitable and proper, and so that no payment in such deferred time shall exceed 15 per cent of such annual sum, provided that in the case of such income right or annuity for a fixed term of "years the time for payment shall not be deferred for a period longer than such term of years".

That simply puts the principle in section 16 where the minister may always defer the time of payment in the case of undue hardship or excessive tax payment. It applies that principle to the question of the tax applicable to a person who is receiving an annuity and is being taxed on that annuity. There must be some relationship of that tax to the amount of the annuity.

Beyond some figure it becomes a hardship. Whether 15 per cent is the right figure I do not know. But it seemed to me only right and proper to provide a maximum amount that can be taken out of that annuity, and the balance be deferred for six years.

Senator CONNOLLY (*Ottawa West*): Could I ask Senator Leonard a question on this proposal? These periodic succession duty or estate tax payments would be of the nature of an annual capital levy?

Senator LEONARD: Yes.

Senator CONNOLLY (*Ottawa West*): Then I just wonder, at the same time as these capital levies are being made, of course, this annuity is subject also to income tax.

Senator LEONARD: That is a hardship. Double tax.

Senator J. J. CONNOLLY: Now, where would the incidence of income tax fall? In other words, would you levy capital tax first, or the estate tax first, or would you levy the income tax first?

The CHAIRMAN: I think they are independent.

Senator LEONARD: You would probably say they are independent of each other, and the present procedure is that both taxes are levied.

Senator J. J. CONNOLLY: But suppose, for the sake of argument, the amount is $5,000 a year. Would you assess your income tax on $5,000, or would you assess it on $5,000 less the estate tax?

Senator LEONARD: No, on $5,000.

The CHAIRMAN: On $5,000.

Senator LEONARD: There is another part of the act where this question comes in about double tax. This is dealing purely with the payment of the capital tax that is properly due as against this annuity, but it can happen that the amount of tax payable in six years exhausts the full annuity during that six-year period, and the life annuitant gets nothing during that six-year period.

Senator HAIG: I would like to ask one of the witnesses a question. Let us take the money a person puts into an annuity. Where does that come from? Who put it up? Is it the husband?

Mr. LINTON: Sometimes the husband may have bought the annuity for the wife and sometimes there could be a pension.

Senator HAIG: Take the case of a wife. The husband does not pay any income tax on it when he puts in the annuity.

Mr. LINTON: That's right.

Senator HAIG: The money that goes into the $5,000 has not been paid at all and he is off Scot-free.

The CHAIRMAN: Are you speaking about a pension annuity?

Senator HAIG: Yes. He has paid no money at all. That has gone in there free.

Mr. LINTON: That's right.

Senator HAIG: I want to know if the $5,000 went in without any tax being paid, when is the Government or the public ever going to get back that income tax they lost.

The CHAIRMAN: Each year.

Senator LEONARD: Each year from then on.

Senator HAIG: That should be paid.

Senator LEONARD: That's correct.

Senator HAIG: That is the total on the $5,000 alone or where it went in in his estate?

Senator LEONARD: We are not discussing the income tax. We quite agree it should be payable. We are discussing how the capital tax should be paid.

Senator HAIG: Supposing my income is $20,000 and I put $5,000 into an annuity as a pension for, say, my daughter. I don't have to pay any income tax on that.

The CHAIRMAN: On what?

Senator HAIG: On that $5,000.

The CHAIRMAN: Oh, yes. The exemption is only up to $1,500 a year.

Senator HAIG: That is on the money itself but I am talking about the annuity that I bought five or ten or fifteen years before. I didn't pay any income tax on it. It is exempt. That is the first point. The second is this. A person only pays income tax now on the $5,000 income and not on the $20,000 income, which he would have had to pay if he had paid it originally. That man is only paying income tax on an income of $5,000 but if he had paid like the rest of us he would have had to pay income tax on the $20,000. The result is that the income tax would have been higher.

The CHAIRMAN: Are you saying that if I had an income of $20,000 and I took $5,000 of it and bought a pension payable to my beneficiary on my death, that I made a payment in one year of $5,000 for whatever that annuity would produce, are you saying that the full amount of money would be tax exempt if I bought it out of income?

Senator HAIG: That's what the witness said.

The CHAIRMAN: Well, I can't accept that at all.

Mr. LINTON: The distinction here is between buying an annuity from an insurance company and contributing to a pension fund which gives rise to a pension annuity. As to the pension annuity, what Senator Haig has said is quite right. If you have a annuity in a lump sum payment from an insurance company, it does not apply.

Senator HAIG: The $1,500 would be exempt?

The CHAIRMAN: Yes.

Senator HAIG: But I would pay a bigger rate of taxation on $1,500 if it was part of $20,000 than I would on $1,500 by itself.

The CHAIRMAN: As and when the pension annuity becomes payable in the hands of the person entitled to receive it after death of the one leaving it, that person pays income tax on the amount of the annuity that is received each year.

Senator HAIG: I know that.

The CHAIRMAN: That is the law.

Senator HAIG: But it is paid at a lower rate.

The CHAIRMAN: It may or may not be.

Senator HAIG: You get back to the $1,500 or whatever it accumulates to and then you pay income tax on that income.

Senator LEONARD: You and I are in agreement on that.

Senator HAIG: I have a further question as to succession duty. Say, there is a succession to the wife and the person buying the annuity did not pay any tax on it originally. It is still taxable.

Senator LEONARD: We agree as to the income tax and the amount of the capital tax payable under this section, but we are just discussing whether or not that capital tax should be paid in six years or, if it amounted to hardship, could it be extended over a longer period of time.

Senator HAIG: No. This hardship is caused by another reason.

Senator LEONARD: Hardship can be created even though the amount involved is not sufficient to attract income tax. It can be created because the capital tax is sufficiently heavy to reduce the amount going to the widow.

Senator HAIG: It is only people with more than $3,000 a year who are going to put $1,500 into an annuity. Nobody else is going to do it. It is the people with an income of $20,000 a year who are going to do that. The little fellow has not got the money to do it.

Senator LEONARD: This applies to cases under wills quite apart from annuities. A life interest in a will can be valued in this way and the payment has to be made within six years.

Senator HAIG: Taxes should be paid on that money as well as on any other money. That is my argument. I don't know why anybody should be allowed off Scot-free.

The CHAIRMAN: This proposal does not exclude any part of the tax.

Senator HAIG: No, but Senator Leonard's proposal does.

The CHAIRMAN: No, it doesn't.

Senator HAIG: Yes, it does. The Minister can let him off at any time.

The CHAIRMAN: No, it is a deferment.

Senator CROLL: It is a putoff.

Senator MACDONALD: It puts off the evil day.

Senator HAIG: It is letting him off. The parties might not live out the period and they would not have paid it back.

Senator POWER: The question here is whether we are going to follow section 16 at the Minister's discretion to do anything with respect to hardship or whether we should accept Senator Leonard's suggestion and specify that if it is over 15 per cent there is hardship; if not, I suppose the Minister could drop section 16. I don't see any necessity for it.

The CHAIRMAN: That's right.

Senator POWER: In any case he probably would exercise his power under that because Parliament would have said 15 per cent was fair.

The CHAIRMAN: The 15 per cent applies to more cases than Senator Leonard has suggested.

Mr. LINTON: It is a matter of policy whether you do that. I have a note of the suggestion and I will bring it to the Minister's attention.

The CHAIRMAN: Then we will stand Section 15 in view of your proposal, Senator Leonard.

Senator MACDONALD: With respect to section 15, are you standing both section 15(1)(a) and (b)?

Senator LEONARD: My suggestion related to section 15(1)(a) and (b).

Mr. LINTON: Perhaps it could be related to (b), inasmuch as if the interest in expectancy is itself an annuity the same thing arises at a later date.

Senator LEONARD: That is right.

Section 15 (1) (a) stands.

Section 15 (1) (b) stands.

Section 15 (2) agreed to.

On section 16—Deferment of time for payment in certain cases.

Section agreed to.

On section 17—Effect of objection or appeal.

Section agreed to.

On section 18—Payment of tax as debt of estate.

The CHAIRMAN: This is new. Would you care to comment on it, Mr. Linton?

Mr. LINTON: This carries out that principle I outlined in the description of payment sections, that the tax is a debt of the estate in regard to payment; and this falls as a debt like any other debt where it is included property.

The CHAIRMAN: And in the ordinary way it would affect first the residuary beneficiary?

Mr. LINTON: That is right, sir. Should we say anything here about the warning the Minister made in this regard having to do with people examining their wills to make sure this principle now being introduced, of an estate tax payable as a debt affecting the residue does not defeat their intentions? This may affect people's wills if any are made on the assumption that what the estate is going to encounter is a succession duty.

The CHAIRMAN: Just speaking for myself, I feel that it is an important change as affecting every person's will, and possibly there should be some plan for public advertising by the department, directing the attention of people to the effect of this.

Senator CROLL: Some trust companies, mortgage companies, insurance companies and banks have monthly publications which are very readable, and if they were asked to prepare a notice so that it would reach the professional people, it could be passed on from there.

The CHAIRMAN: I suggest for the consideration of the committee that possibly we should make a recommendation that the attention of the Minister be directed to the need for the greatest possible acquaintance of the public to the change.

Senator THORVALDSON: If the department has that in mind, perhaps Mr. Linton would like to speak on it.

The CHAIRMAN: Even if they have it in mind—and I am not suggesting an amendment to the bill—I think a recommendation of the committee that these steps should be taken would be in order.

Senator CROLL: If in the course of presenting the bill the chairman took the opportunity to say "and this recommendation was made", it might very well be picked up and go into the records and be spread about without hurting anyone.

The CHAIRMAN: It could be put in the recommendation in reporting the bill.

Senator CROLL: That is what I suggest.

Mr. LINTON: We suggested to the Minister that he make a statement, which he did. I think this proposal of Senator Croll's would be excellent in advancing the thing further. We have in mind advising the Trust Companies' Associations of this sort of thing. I do not know whether it is necessary to advise the Bar Association, but a recommendation by the committee would be very good.

Senator MACDONALD: I think the Bar Association should certainly be advised, and that the association should advise all its members of the change. We of course are very interested in this fact and are following it very closely, but many lawyers are engaged in other business and have not the time to do so.

Senator HAIG: Should not the trust companies be notified also?

Senator CROLL: Yes, I suggested that, too.

The CHAIRMAN: As and when we are drafting our report we can make our recommendation on the publicity of the effect of this change.

Senator GOUIN: In Quebec there is a Chamber of Notaries.

Section agreed to.

On section 19—Interest.

Section agreed to.

On section 20—Penalties.

The CHAIRMAN: This section deals with penalties for delay in filing, etc.

Senator EULER: May I ask a question, Mr. Chairman? Supposing somebody makes himself liable to a penalty of $1,000. Is that a personal penalty, or can he reimburse himself out of the estate?

The CHAIRMAN: I would say these are personal penalties.

Mr. LINTON: I would say so.

The CHAIRMAN: Subsection 2 bothers me a little. It says, "Every person who fails to complete the information on a prescribed form". I suppose it is a matter of interpretation; but he may not be able to complete it.

Mr. LINTON: Perhaps Mr. Thorson has some views on this.

Mr. THORSON: This of course is one of the assessed penalties payable by the executor in question. Where there was a penalty assessed against an executor for failure to file the return required, that, too, would be added to the tax and paid in the same manner as the tax would be payable.

The CHAIRMAN: But I was thinking that in subsection 2, "Every person" includes more people than the executor; it may be any successor.

Mr. THORSON: Quite so.

The CHAIRMAN: He may not be in a position to answer all the questions you have devised on that form. But this provision says that if he fails to complete the information there is a penalty up to $1,000, and that seems to be whether he does so innocently or deliberately, or otherwise, it does not matter.

Mr. THORSON: Mr. Chairman, that is only "information required pursuant to section 11".

Senator EULER: If he is liable it is not necessary to be applied, is it? It is not mandatory?

Mr. THORSON: No.

The CHAIRMAN: But he may be prosecuted.

Senator POWER: Put in a word like "wilfully", or something of that kind.

The CHAIRMAN: That is what I was thinking of.

Senator HAIG: We will have to discuss it with the Minister.

Senator WHITE: Have you had cases in the past where there has been a heavy penalty?

Mr. LINTON: The penality in the old act for failure to disclose property was double the amount of the duty, with no allowance, no mitigation at all. In failure to file the return, yes, we have had a considerable amount of late filing. Where the maximum penalty was applied I think we have had perhaps two or three cases. Perhaps ten or twelve where half of it was applied; mostly, $10, $20 or $50.

Section 20(1) agreed to.

Section 20(3) agreed to.

Section 20(2) Stands.

On Section 21—Refund of Overpayments.

The CHAIRMAN: This is new. Here is where you get your three per cent, Senator Euler.

Senator EULER: I think that is fair.

The CHAIRMAN: All I can say is, it was ever thus.

Mr. EATON: This is an explanation of the difference, and the five per cent is a penalty, and it is expressed in terms of per cent. The three per cent refund is not a penalty, it is a short term rate of interest. One is a penalty designed to do a certain thing, and naturally it is penalty rate. The other is a short term rate of interest.

Senator POWER: But it takes a heck of a long time to get it.

Senator WHITE: How do you justify the five per cent if there is a decision of the Minister in a court action?

Mr. EATON: When he gets his money back it is not a penalty but just a straight payment of interest.

Senator WHITE: But why do you have three per cent and five per cent?

The CHAIRMAN: It is 3 per cent if he does not go to court.

Senator WHITE: How do you justify the 3 per cent and the 5 per cent?

Dr. EATON: I do not have the answer to that, Senator White. He has to find the money to pay the tax, he has to get possession of his money to pay the tax. Now, if that is a sufficient reason or not I do not know.

Senator WHITE: Then on all over-payments, whether the over-payment is decided by the local officer or whether there is an appeal and a court case follows, there is a difference of this 2 per cent.

The CHAIRMAN: I doubt if there is any explanation except that if they go to court and contest the assessment I suppose that it is a reward for victory. I cannot think of any other reason for it.

Dr. EATON: Well, Mr. Chairman, upon assessment he has to pay up even though he has the right to appeal. Now then an over-payment is a thing that can be done voluntarily, and so one could over-pay. If we were to pay 5 per cent and he could only get 2 or 3 per cent in the market then I think in that there is an incentive to over-pay.

The CHAIRMAN: Shall section 21 carry?

Carried.

Section 22. This is headed, "Objections to assessments." The procedure here is copied from the Income Tax Act, is that right, Mr. Linton?

Mr. LINTON: Yes, substantially.

Section 22 carried.

The CHAIRMAN: Section 23 provides for appeals to the Tax Appeal Board. This is new, but is copied from the Income Tax Act.

Section 23 carried.

The CHAIRMAN: Section 24 deals with appeals to the Exchequer Court.

There is nothing new or novel there, is there Mr. Linton?

Mr. LINTON: It is new for this bill.

Senator CONNOLLY (*Ottawa West*): Are you restricted in that appeal to questions of law alone?

The CHAIRMAN: No, it would be a trial *de novo,* as under the Income Tax Act.

Section 24, carried.

The CHAIRMAN: Section 25 deals with irregularities. It is the same provision as is in the Income Tax Act.

Section 25, carried.

The CHAIRMAN: Section 26. Now we come to special rules applicable in determining value. This has a very few pointed rocks jutting up above the surface of the water. This section provides that in determining the value of any property no allowance or deduction shall be made for or on account of income tax.

The subject involved here was discussed in the representations made the other day.

Senator CROLL: Mr. Chairman, there is no change in substance from section 34 (3). This is not new?

Mr. LINTON: No.

The CHAIRMAN: You took statutory authority to do this in 1952?

Mr. LINTON: That is right.

The CHAIRMAN: Prior to that time you did it when the cases seemed to warrant it without the benefit of statute.

Senator LEONARD: While this is not new, Mr. Chairman, I think it has been a subject of considerable discussion and possibly some controversy and I believe that there is generally a desire to do something, if it can be done, to avoid the double taxation feature that is contained in the assessment of the capital value of a pension benefit where a full income tax is to be paid upon that pension benefit as and when received, and the difficulty I think is in determining how to allow for that potential tax liability still to be paid in the future. Now, as some of the witnesses told us, under the personal retirement arrangement, an arbitrary rule of 15 per cent has been set up so to allow for payment of a deferred tax, one might say, when a deduction has been allowed on the payments that went into the personal retirement fund. The suggestion that I have to make is as follows, and I again put it forward very roughly with the idea of setting up the principle and leaving it perhaps to the department or to the minister to see how that can be worked out.

Let me say before I do it that I believe that most people are convinced definitely that there is double taxation here, that the income tax liability which still remains to be paid under the pension benefit is included in the valuation of the benefit for capital tax purposes. Now, the suggestion is this, and it would involve an addition to section 26 and would be in terms as follows:

> "Notwithstanding the provisions of the present section 26 that where under the "Income Tax Act a superannuation or pension benefit is taxed..." and then are the words that are used in the Income Tax Act, "...to distinguish between the benefit where only the income tax element is taxable and where the benefit itself is taxable."

So this confines the effect of this amendment to that benefit which is fully taxable under the Income Tax Act. Then, in determining the value of such benefit under this act the minister shall by regulation prescribe for the estimation of an allowance for such income tax and such allowance shall be deducted from the value of the said benefit as otherwise determined.

Now it may be that the minister may say 15 per cent, the same as in the personal retirement fund, or he might set up some kind of a table related to the amount but any rate it brings in the idea of a principle that there is an element of tax liability in the present valuation of those pension benefits.

The CHAIRMAN: Is there anything you wish to say on this, Mr. Linton?

Senator CROLL: Let it stand, Mr. Chairman.

Senator HAIG: I would also suggest to let it stand.

Section 26 stands.

The CHAIRMAN: Section 27(1) deals with the method of valuing stocks listed on stock exchanges.

Shall section 27(1) carry?

Carried.

Subsection 2 of section 27: I would suggest it stand, because this raises the question of valuations of shares in a controlled company.

Senator POWER: Or in a private company.

The CHAIRMAN: And I suggest that sections 28 and 29 should also stand, and may I say very briefly why: section 28 is the one that says any controlled company even though the person who dies has a minority holding of shares but because there may be other persons who are related to him by blood, marriage or adoption who have enough additional shares to make up control, then the minority holding is to be valued on the basis of being a majority holding.

Section 29 simply says that if a controlled company owes money to its chief shareholder, who may have a minority interest, and that person dies—it may be two or three years before the debt falls due—that for the purpose of valuing that dept it is taken as though it were due at once and not in three years time. I suggest that section be allowed to stand to be discussed with the Minister.

Sections 28 and 29 stand.

On section 30—property disposed of *inter vivos*. This is a new section; would you care to make a short statement, Mr. Linton?

Mr. LINTON: The property that was taxed heretofore by reason of being a gift *inter vivos* was valued at the date of death of the deceased, no matter what had happened to the property. So, you could have a situation where property worth $10,000 was given a donee who sold it at $10,000, and two years after, the donor died and that property was worth $50,000 then. The tax was on the $50,000 that the donee never realized. This section is to confine the value, when the donee sold the property, to the value at the date of sale. It goes further than that and applies to any property that the donee has disposed of, and takes the valuation of that property at the ime of disposition.

Section 30 agreed to.

The CHAIRMAN: I think we could get unaminous vote on that one.

Senator POWER: Except to say that the department has not always carried out that policy.

On section 31—shares of corporation by reference to which stock divided paid.

The CHAIRMAN: Section 31 is also new. Would you give a short statement on that, Mr. Linton?

Mr. LINTON: This is intended to reach a situation where stock is given in a private company by the deceased as donor to a donee, and the company issues Treasury shares as bonus stock to the shareholders.

The CHAIRMAN: Stock dividends.

Mr. LINTON: Or as stock dividends—that is the terminology we have used. With the result that the shares given have become halved in value, so if you were taxing the donation you would tax the new amount of shares; otherwise you are taxing half the donation given, since the interest in the company has not changed, but the number of shares has—they have been watered down.

The CHAIRMAN: You take half as an example.

Mr. LINTON: Yes.

The CHAIRMAN: The stock dividend might be one to ten.

Mr. LINTON: Yes.

Senator HAIG: That would apply to Trans-mountain.

The CHAIRMAN: I should like to raise this question with Mr. Linton suppose in section 31 you are talking about shares listed on the stock exchange,

Mr. LINTON: The principle would still govern.

The CHAIRMAN: The usual tendency where you have a stock dividend or a split—but this would cover only stock dividend, not a split.

Mr. LINTON: No.

The CHAIRMAN: Where you have a stock dividend you may find the shares increase in value; the market goes up when it should go down, and vice versa.

Mr. LINTON: Suppose those stock dividends were one share for every 10 held, the interest of each shareholder in the company is represented by the proportion held after the dividend, to the total shares held; and if you only tax the donation, the number of shares, you are losing part of the donation.

The CHAIRMAN: All I am saying is that the market price for stock which is listed is taken at the date of death. If the market price goes up, you have an additional amount on the valuation of those shares.

Mr. LINTON: That is right. Of course that is the principle of valuing at the date of death. If the donated portion is still held, and, apart altogether from the stock dividends, has increased in value, the increase is taken in because it is in the value at date of death.

The CHAIRMAN: In section 31 you are supposing this is disposed of at the date of death, not at the date of gift?

Mr. LINTON: That is right. All gifts are valued at the date of death.

The CHAIRMAN: This is subject to three years limitation.

Mr. LINTON: Not always. The donation might be with reservation of benefit.

Senator MCLEAN: May I ask a question about this matter of valuation at the date of death? The exchequer does not get charge of an estate for perhaps two months, which would mean the executors would have to sell short in order to realize on it.

Mr. LINTON: That is a point; some of these representations which were made are not relevant to this section, but you may want to take the matter up.

Senator MCLEAN: I asked that section 27 stand for that reason, that it might take the executors two or three months to get charge of an estate.

The CHAIRMAN: You are raising the principle of optional value.

Senator MCLEAN: Yes, there should be an alternate rate. Will that point come up again?

The CHAIRMAN: Yes.

Section 31 agreed to.

On section 32—shares of controlled corporation where beneficiary of insurance policy.

Mr. LINTON: Section 32 is introduced so that any insurance of a controlled corporation that becomes taxable under section 3(1) (m) will not again become taxable in valuing the shares of that corporation. It is designed to eliminate the double taxation feature which existed in Bill 248.

The CHAIRMAN: If you bring the insurance in as part of the assets of the estate to value the shares, you don't add the proceeds of insurance to the assets of the company to value the shares.

Mr. LINTON: Precisely.

Section 32 agreed to.

On section 33—property where quick succession.

The CHAIRMAN: This deals with quick succession, and there is nothing new in it. In other words, if there is a second death within the first year the duty the second time is only 50 per cent. I notice it says on the value of the property: do you mean that the limitation of this section is that you must take the same value as the original value a year before?

Mr. LINTON: No.

Senator CONNOLLY (*Ottawa West*): And it only applies to the property that passed on the first death.

The CHAIRMAN: That is right.

Section 33 agreed to.

Senator HAIG: When do you propose to adjourn?

The CHAIRMAN: Before coming to Part II if you are going to raise the question of optional values this is the place to do it. Senator McLean has raised a point with respect to some suggested addition to that part.

Senator CROLL: We will come to that section and Senator McLean can raise it at that time.

The CHAIRMAN: I don't think we come to the section later; it must be raised now.

Senator CROLL: The Chairman knows about it, and the matter can be talked over with the minister.

The CHAIRMAN: Yes. That comes in division (f) of the rules applicable in determining value.

Whereupon the meeting adjourned until 8 p.m. this evening.

At 8 p.m. the sitting was resumed.

The CHAIRMAN: Gentlemen, we have a quorum. We are at section 34, page 29. Part II deals with estate tax in respect of persons domiciled outside Canada. This is a new Part, and I think it might be advisable to get a statement from Mr. Linton.

Mr. LINTON: Mr. Chairman, this section introduces the new concept of taxing Canadian assets of foreign estates at a flat rate. Heretofore the tax was at the same rates as applied to domestic property, and there were proportionate allowances for debts and on exemptions and so on. Now this section and subsequent sections put the flat rate of 15 per cent on all Canadian property in a foreign estate, reduced only by the debts that are charged against that property,—such things as hypothecs or mortgages or secured debts.

Senator LEONARD: I think that is a good suggestion. The only thing I was wondering about was whether or not the question of debt could go further than a secured debt and apply to a debt payable in Canada. No doubt you considered that. Have you any comment on that?

Mr. LINTON: Well, originally, Mr. Chairman, the bill was drafted to allow no debts at all. But certainly, I think, the various aspects of debt allowances have been considered, and this was what emerged. On the policy of doing so perhaps Dr. Eaton might say a word.

The CHAIRMAN: I was wondering before Dr. Eaton says a word, whether you could deal with this too? If I am a nondomiciled person, and I buy a property in Canada, and there is either a mortgage on the property or I put a mortgage on the property to provide some of the purchase money, then the mortgage is allowed as a deduction. If my credit is good, and I go to the bank and I borrow a substantial sum of money to buy the property, then I am not allowed to deduct the amount of that debt as against the value of the property.

Senator HAIG: Why not?

Mr. CROLL: The money was not directed to the property. That is the difference.

The CHAIRMAN: I borrowed the money and used it.

Senator CROLL: You did not say that before.

The CHAIRMAN: Oh, yes.

Mr. LINTON: On the assumption that, in the example given, the money borrowed from the bank was in no way secured by the property purchased, the debt would not be allowed.

Senator CONNOLLY (*Ottawa West*): Does the section in effect mean this, that a debt incurred in connection with a piece of real property would be the only debt that would be recognized?

Mr. LINTON: No. Supposing a stock brokerage account was opened, and the stock purchased was on margin, that would be allowed. Chattel mortgages would be allowed.

Senator CONNOLLY (*Ottawa West*): I was going to say it would not have to go to the point where you would have to have a registered encumbrance, like a land mortgage or a chattel mortgage.

Mr. LINTON: As long as there was an encumbrance, a charge against the property, or the person to whom the money was owed could proceed against that property.

Senator LEONARD: I take it the 15 per cent is an arbitrary rate, without relation to the value of the property or any consideration, and you are going as far as you feel you can go in bringing in a charge against the particular property which is liable to the 15 per cent tax.

Senator HAIG: Did you not get that on account of negotiations you have had with the countries on the tax rate between them?

Mr. LINTON: No.

Senator HAIG: Is that not the way you got the idea?

Mr. LINTON: No.

Senator CROLL: Is Dr. Eaton going to say something?

Dr. EATON: We are following here the pattern we have adopted in income tax and one which has been pretty well generally adopted throughout the world. Canada was one of the countries that led off in what I shall describe as an impersonal tax rather than a personal tax on a graduated basis. That makes pretty good sense. After all, non-domiciled people are not living in this country. They are not part of the Canadian community. They have invested here—

The CHAIRMAN: Some of them live here.

Dr. EATON: They may live here but if they are not domiciled here their property will be treated on a non-personal basis.

Senator HAIG: What about when you make a deal with Belgium and these other countries? Is that the basis you use?

Dr. EATON: No sir, it has nothing to do with that.

Senator HAIG: But you are going to charge 15 per cent.

Dr. EATON: We will charge everybody 15 per cent regardless of treaties.

Senator HAIG: I thought the treaty that was made with the United States provided for 15 per cent.

Dr. EATON: That is income tax.

Senator HAIG: That is what I say, in income tax.

Dr. EATON: Yes, but here there has been no negotiation of 15 per cent.

Senator HAIG: Isn't that where you get the idea though?

Dr. EATON: No, not at all.

Senator HAIG: Why didn't you take 20 per cent and not strike on 15 per cent?

Dr. EATON: Well, why not 15 per cent? I will make the statement that the revenue from a 15 per cent tax gives us about the same as we were getting under the old law at graduated rates on a net basis.

Senator CONNOLLY: And less work.

Dr. EATON: Yes.

Senator CONNOLLY (*Ottawa West*): Senator Haig is right. There is a connection between the 15 per cent of income tax and the treaties. There is a rule of thumb there that wasn't bad.

Dr. EATON: Well . . . . O.K.!

Section 34 agreed to.

On Section 35: Computation of aggregate value.

Section 35 agreed to.

On Section 36: Computation of tax.

The CHAIRMAN: This has to do with the 15 per cent rate.

Section 36 agreed to.

On Section 37: Deduction from tax: provincial duties.

The CHAIRMAN: This deals with the deduction from tax, provincial duties, et cetera. Now, it should be noted here that the 50 per cent deduction for provincial duties in the case of non-domiciled persons is on the basis of provincial taxes paid, whereas for native sons it is on property situate in the province and not on provincial taxes paid. I am only calling your attention to the different bases of approach. Does this carry?

Senator LEONARD: We have no objection.

The CHAIRMAN: That's right.

Section 37 agreed to.

On Section 38: Situs of property.

The CHAIRMAN: This deals with the situs of property. This section is at least new in part. Mr. Linton, you dealt with the matter of situs before. Would you care to make a statement on this?

Mr. LINTON: Yes. The situs rules in this part of the act are introduced for the purpose of establishing this foreign estate tax. They have been taken from the various treaties that have been negotiated in which situs rules were agreed upon between Canada and, say, the United States and Canada and the United Kingdom, and Canada and others. These treaty rules are not all identical although they are all very close and, this is again, close to them. It fits, therefore, with the taxation agreements that we have had all along, but it is now embodied in the act instead of being in an agreement.

Senator HAIG: Agreed.

The CHAIRMAN: Mr. Linton, I am told that at the present time deposits which a Canadian might maintain in a bank in the United States, in the event of his death, if he has enough assets there, the deposits are not subject to probate.

Mr. LINTON: They are not subject to tax.

The CHAIRMAN: Yes, they are not subject to an estate tax. That is what I meant to say.

Under the present law, what is the position of deposits in a bank account here if the non-resident person has no other assets in Canada?

Mr. LINTON: They are subject to tax.

The CHAIRMAN: So this is no change?

Mr. LINTON: No change in that.

The CHAIRMAN: Any other questions on situs?

Section agreed to.

Section 39—Administration.

The CHAIRMAN: We come now to page 33, Part III, which deals with administration. Now, under section 39, subsection 2 in part is new. Is there any particular feature there you should direct your attention to, Mr. Linton?

Mr. LINTON: I do not think so, no.

The CHAIRMAN: Which is the new part, that which brings these people under the provisions of the Civil Service Act?

Mr. LINTON: Yes, in effect they are at present, but this was not embodied in the old act because at the time of the original Succession Duty Act, when it was passed, they were not. They are now and are part of the Civil Service Commission system, too, now. They were in the superannuation scheme originally, but were not under the Civil Service Commission system, back in 1941.

The CHAIRMAN: I see that subsection 4 is new. That is purely administrative, though?

Mr. LINTON: Yes.

Senator CONNOLLY (*Ottawa West*): Referring to section 4, you must qualify eventually for that, must you not?

Senator LEONARD: Not necessarily.

The CHAIRMAN: I would think the federal authority for federal purposes could designate certain people or certain positions and say, "We will give them the power to administer an oath".

Senator CROLL: We have a federal-wide Q.C.

The CHAIRMAN: That is right.

Section agreed to.

On Section 40—Collection and Enforcement.

Section agreed to.

On Section 41.

The CHAIRMAN: This provision is new in part, but it must be a provision that is borrowed from the Income Tax Act certifying the amount of the assessment and depositing it in the Exchequer Court, and being able to issue an execution?

Mr. LINTON: Many of these administrative sections have been taken from the Income Tax Act.

Section agreed to.

On Section 42.

The CHAIRMAN: This is in the nature of a penal section, a person leaving Canada or removing property.

Senator CROLL: Could you give me a case that would fall within that, Mr. Linton?

Mr. LINTON: I can give you a sample. There was a case where we were advised by people in the know, on the quiet, that a large amount of property, approximately $1 million, was the subject of a transaction which might be subject to succession duty, and which upon examination we discovered was so

subject in our opinion. That property was on its way out of Canada, and we had to proceed without anything in the act by means of a writ in the Exchequer Court, a writ of immediate extent, to seize that property. We had a little trouble finding it, but we did, and stopped it going out of the country and got the tax on it; but to have to proceed without anything in the act in a situation like that seemed very unsound. This happens pretty rarely, but there is that good sample as one case where it almost happened.

The CHAIRMAN: That is a provision you find in provincial statutes. I know you have it in Ontario in the Absconding Debtors Arrest Act, for instance, and this is the principle of it.

Senator ASELTINE: You will have to take your exemptions with you.

Senator CONNOLLY (*Ottawa West*): How did you obtain the writ?

Mr. LINTON: I do not think I am knowledgeable enough in the law to answer that question.

Senator CROLL: That was the purport of my question.

Mr. DE WOLF: A writ which the Exchequer Court recognizes for the purpose of seizing goods and chattels was issued. It is a common law writ that the Exchequer Court uses for this purpose.

Senator CROLL: Let me put it in this way: someone in your department, and I am just curious, made an affidavit and said, "I do believe thus and so on information that was given to me" without disclosing the information. You were on pretty thin ground at that time and you might have stepped into something that would upset the applecart in which case you would leave yourself wide open. How did you avoid that? It happened in this case that you were right.

Mr. DE WOLF: That is something I personally cannot answer because collection is not under my particular jurisdiction. Somebody else looks after collections. I understand that the affidavit you mentioned was taken and we proceeded to the Exchequer Court and the Exchequer Court granted the writ and the property was seized.

Senator THORVALDSON: And possession is nine points of the law.

The CHAIRMAN: Section 42 looks all right to me but I would attract your attention to the fact that there are two things in it, one is if the Minister has reason to suspect that a person by whom any amount is payable as tax, interest or penalties in respect of the death of a deceased, or that a person outside of Canada by whom any such amount is payable is about to remove or cause to be removed from Canada property, so that the action which they could take is an action against the person to restrain a person from leaving Canada and action can also be taken to restrain property likely to move at the instance of some person outside of Canada so as to get away from an estate tax liability here. Well, the first part is akin to our absconding debtors arrest law in Ontario. It is unfortunate but we need that authority.

Senator BAIRD: Do I understand this right? For instance I have in mind going with my estate to Nassau. It represents probably $100. Would I be allowed to go and settle there and take that $100?

The CHAIRMAN: Oh yes, that does not touch on this at all. This is only where a person responsible for a payment of some estate tax and interest is about to leave the country or is about to remove some property from the country.

Mr. LINTON: If your executor decided to take all the property to Nassau it might apply.

The CHAIRMAN: It might not be necessary to take the property. If he was going to leave himself you could keep him here.

Shall the section carry?

Section 42 carried.

Now we come to section 43 which is the lien section. Would you explain that, Mr. Linton?

Mr. LINTON: According to this section a lien is put on all real estate in Canada belonging to a decedent. This lien principle is some extension from the old act in so far as it now applies to all assets whereas in the Succession Duty Act it applied only to real estate of foregin domiciled decedents.

The CHAIRMAN: Why do you say "it may be registered" rather than say "it shall be registered"?

Mr. LINTON: Well I do not think we would want to register it in most cases. In most cases we would never have to resort to it.

The CHAIRMAN: To some persons dealing in real estate and wishing to obtain a good title, if an executor gets consent from the Minister to transfer the property then the executor transfers the property but this lien exists at the time. How do I get rid of that? There is no provision in here for the discharge of the lien and there is nothing in here that says that the consent of the Minister operates as a discharge, and I think that both those should stand.

I would suggest that this section stand.

Senator ASELTINE: Let the section stand.

Senator CROLL: First, may I ask Dr. Eaton, have you met that situation in the Income Tax Department?

Dr. EATON: Perhaps Mr. Sheppard can answer that.

Mr. D. H. Sheppard, Assistant Deputy Minister, Department of National Revenue: I don't think it is the same thing. I understand registry offices do not require our consent to transfer property. They are transferred without the consent. So, we need the liens.

Mr. LINTON: May I add to that, if the registrar did recognize our consent, as stock transfer agents and banks do, there would be no need for this provision.

Senator BOUFFARD: So far as the province of Quebec is concerned, a lien on a property does not disappear until after 30 years, unless there is a discharge. In other words, the lien remains for 30 years. It seems to me there should be some provision whereby the Crown can discharge liens.

Senator ASELTINE: Would it be necessary to obtain that document before any land changes hands? Would the registrar register a transfer of deed?

The CHAIRMAN: It is not a case of what the registrar will register. The registrar would not accept for registration the consent of the minister to transfer the property. Then you may be in the situation where you are taking title from the executor of an estate in Ontario, and you know this statute provides for a lien, but no lien is registered. How do you safely take title in those circumstances?

Senator ASELTINE: Let the section stand.

Senator CONNOLLY (Ottawa West): In Ontario the registry offices, as well as the registrars, do not require the production of the succession duty releases.

Mr. LINTON: That is the trouble.

Senator CONNOLLY (*Ottawa West*): But you still have this over-riding lien. When it is in the law, it is hard to say whether third parties taking the property without notice of lien are taking it free of lien; they are presumed to know the law.

The CHAIRMAN: It immediately raises the question of provincial versus federal jurisdiction, because the Registry Act in Ontario attaches certain characteristics to notice because it is registered, but f it s not registered, then it is something else. Where does one end and the other start? All I know is there can be a lien without registration, and if you are acting for a purchases, you have to be very careful.

Senator BOUFFARD: Apart from that, in Quebec a lien is preferable to a mortgage, according to provincial law; a lien for taxes comes before any kind of mortgage.

Senator HOWARD: That is right.

Senator BOUFFARD: That means there may be a mortgage on a property, and if the mortgagor dies, the lien will immediately be established on that property.

The CHAIRMAN: In priority to the mortgage.

Senator BOUFFARD: And will come before the mortgage, in the case of sale under any other mortgage that might be on the property. Therefore, the lien has a great bearing on it, and you have no right of discharge. It seems to me if the Crown gives the heir the right to sell, that right to sell by the Crown should be equivalent to a discharge of the lien on that particular property.

Mr. LINTON: Perhaps we should re-consider this point.

The CHAIRMAN: Yes; I have marked the section to stand.

Senator WHITE: May I ask Mr. Linton a question? When the minister spoke in the house he pointed out that the purchaser of realty would have the same responsibility cast upon him for his own protection, of making sure whether estate taxes had been paid.

Mr. LINTON: That is right.

Senator WHITE: If the solicitor for a purchaser from an estate communicated with your district office to inquire if the tax were paid, you couldn't give him any information, could you? How would the solicitor for the purchaser go about ascertaining whether the tax had been paid on that estate?

Mr. LINTON: I think he would have to go to the executor, who would get the information; and of course, we would be very willing to give a certificate if it had been paid, but I am afraid a certificate would not discharge a lien, as several persons here have said.

Senator WHITE: All you would give would be the usual consent.

Mr. LINTON: That is all the machinery we have at the present time.

The CHAIRMAN: Which is not really enough.

Senator BOUFFARD: Could I ask Mr. Linton this? In so far as Quebec is concerned, unless you are going to have a lien, which is preferable to an existing mortgage at the time of death, it seems to me that some other expression than lien should be used. The lien should go with the mortgage that existed at the time of death.

Mr. LINTON: Might I ask Senator Bouffard if the situation is such that the lien could be put on with some provision that it did not rank ahead of mortgages?

Senator BOUFFARD: Yes, you can take the lien the way you want. The law says in Quebec the lien for taxes comes before mortgages. That depends on the law. If your law says it does not, it won't.

Senator MONETTE: The time of the registration of the lien matters not. In mortgages time is essential; they go by precedence according to the time of registration, but the lien is a lien; it has precedence over a mortgage.

Senator CONNOLLY (*Ottawa West*): I think perhaps there is a good deal to be said in favour of the department having a lien on property to secure payment of duty.

The CHAIRMAN: I don't understand anybody to protest against that.

Senator CONNOLLY (*Ottawa West*): I wonder if the consent of the minister, issuing under a section we are coming along to—

The CHAIRMAN: Section 46.

Senator CONNOLLY (*Ottawa West*): —whether that consent might, for that purpose, or for that property, release any lien. I am thinking of a practical way out.

The CHAIRMAN: We were discussing that; and the point is that a consent as such is not registerable. It has to be in the form of a discharge.

Senator CONNOLLY (*Ottawa West*): The consent perhaps could be so worded as to be in the form of a mortgage. Even if the registrar does not take it, the purchaser would have some assurance. In the case of Senator White's man, the purchaser would have some assurance that the lien did not apply to that property.

The CHAIRMAN: It is not a case of having "some assurance". I should think, if you are acting for a purchaser, you want complete assurance.

Senator CONNOLLY (*Ottawa West*): I would suggest that perhaps you might so word the consent to the transfer that it would have that effect.

The CHAIRMAN: I think it has to be put in a form that is registerable.

Senator MACDONALD: Under the Ontario Registration Act we would have to file a consent and register the consent with every property owned on which the deceased has a mortgage. You recall that you have to register them.

The CHAIRMAN: What we are discussing here, though, is the case of a purchaser who is entering into an agreement to buy a piece of real estate from an estate. You know under the provisions of this act there is a lien to the federal authority in connection with unpaid estate taxes. How do you, acting for the purchaser, establish a clear title for your intending purchaser?

Senator MACDONALD: Why cannot you get a consent to the transfer?

The CHAIRMAN: A consent to the transfer does not operate as a discharge.

Senator MACDONALD: I think, under the Ontario Succession Duty Act, that a consent to the transfer frees the land.

The CHAIRMAN: We are not dealing with the Ontario Succession Duty Act, and nothing in the Ontario Succession Duty Act would have anything to do with this.

Senator MACDONALD: That is the point I am trying to explain, that we could have a similar consent from the dominion succession duty department.

The CHAIRMAN: That would be something tantamount to a discharge.

Senator MACDONALD: No; there is not a discharge in Ontario.

Senator WHITE: A certificate that the duty is all paid. But there is no lien in Ontario.

Senator MACDONALD: If there is a consent of the Crown for the purpose of selling the property to another buyer, that is tantamount to a discharge. Otherwise, if it is only in favour of the first buyer, the privilege would revive if the first buyer sells to another one. Well then, it is no good for the first buyer to say it is tantamount to a discharge.

The CHAIRMAN: All we are saying is, let us correct it in such form that there can be a good title.

Senator THORVALDSON: Take the case of Manitoba and other western provinces. We have the Torrens system, and I don't think the federal Govern-

ment could apply a statutory lien against land in Manitoba, the title of which is guaranteed by the province of Manitoba, without directly filing a lien. We have had that situation with regard to all the provinces where you have a Torrens system.

The CHAIRMAN: You mean that the provision in our constitution which gives the federal Government such ancillary powers as may be necessary to carry out a proceeding of this nature would not enable them to create a lien?

Senator THORVALDSON: I don't think it would.

The CHAIRMAN: However, we are standing the section.

Senator MACDONALD: I think it is very important.

The CHAIRMAN: Section 44: Actions.

Senator CROLL: What is the purpose? Is that to avoid taking action against officers of the Crown?

The CHAIRMAN: No.

Senator CROLL: What is it?

The CHAIRMAN: If you withhold and remit a tax that somebody else owes, you cannot be sued for it.

Senator MACDONALD: In Quebec they have two ways, of either keeping the privilege or saying the privilege is no more available. In some cases you can keep a privilege by registering the privilege within a certain time, or you can get away from the privilege if no action is taken with notice to the registrar within a certain length of time. Maybe you could adopt one of these two forms, and say that a lien might be discharged that way.

The CHAIRMAN: You were asking the purpose of section 44. Mr. Linton?

Mr. LINTON: I think, Mr. Chairman, it is just as you said.

If, for instance, an executor withheld something from a successor who got property under the control of the executor, and also got property outside the executor's hands, according to the act the executor withheld some of the property that went through his hand—and used it to pay the tax as he was required to, no action would be taken against him.

Section 44 agreed to.

On Section 45: Inspection.

The CHAIRMAN: This Section is borrowed or imported from the Income Tax Act and gives a right of inspection and inquiry to ascertain whether, where and under what circumstances there might be assets.

Senator POWER: It is the "Succession Duty Gestapo."

The CHAIRMAN: Let us say it is the policing section.

Senator LEONARD: Are there any changes of consequence from Section 126 of the Income Tax Act?

Mr. LINTON: No.

The CHAIRMAN: They have got to have some machinery.

Senator CROLL: Well, they couldn't improve the Income Tax Act there. There is no room in that section for improving it.

Senator POULIOT: Before this is carried, I understand that we are on a section that deals with inspection—

The CHAIRMAN: And inquiry.

Senator POULIOT: Well, Mr. Chairman, I find this type of provision is unfair. For instance, under certain provisions of the Income Tax Act members of the R.C.M.P., or other persons, can go and seize all the documents in a place

and leave no records at all. This sort of thing is contrary to the principles of human rights. It has happened to doctors under the Income Tax Act, and the same thing would apply under the Estate Tax Act.

The CHAIRMAN: The same thing would apply to a lawyer.

Senator POULIOT: Well, it is pretty difficult for a person when all his papers are taken by the officials of the department and he cannot use them for months and sometimes for years. Copies of his documents could be made at his place of business. I do not see why all his papers have to be brought to the department where he cannot use them. It is most embarassing for him.

The CHAIRMAN: Senator Pouliot, you have raised a very interesting point. Under the provisions of the Combines Investigation Act where you have seizure provisions somewhat similar to these, there is a requirement in that Act that copies must be made of all documents which are seized and those copies must be provided to the person from whom they were taken within 30 days.

Senator POULIOT: That is fair.

Senator POWER: At his expense.

The CHAIRMAN: No.

Senator POWER: Well, it is under the Income Tax Act.

The CHAIRMAN: Under the Combines Investigation Act it is at the expense of the Crown.

Senator POULIOT: I know of a case where the R.C.M.P. went to a doctor's office and took all his papers and records and he could not get them for months. In order to consult them he had to go from Riviere du Loup to Quebec City. I find that sort of thing is unfair. I do not agree with that kind of legislation at all.

The CHAIRMAN: What have you to say Mr. Linton?

Mr. LINTON: I have not had much experience with this since we have not had this section in the act before, and I have never been involved under the proceedings of the Income Tax Act.

Senator POULIOT: I know, Mr. Linton, that this is a new thing for you but why do you take this provision from other pieces of legislation and put it in this bill?

Mr. LINTON: The reason for taking this into the bill is for the occasional cases. I must say we have had very few cases in estates where this kind of thing would have been used, but we have had one or two. We have had cases where there were safes in the house in which it was thought with pretty fair certainty that there were assets and important documents in it, and there was no machinery to do anything about this. It was felt that if we were going to administer the act in any fair way we had to have some means of preventing people from defeating its terms by just hiding their records.

Senator POULIOT: Well, this is contrary to human rights and fundamental freedoms.

Senator HAIG: This section is not intended for honest people, so we don't need to worry.

The CHAIRMAN: There is power to inspect.

Mr. SHEPPARD: But it does not give power to search.

The CHAIRMAN: What does "inspect" mean?

Senator CROLL: What is the difference between seizing and searching? If a person seizes something what difference does it make if he doesn't search?

Senator POWER: In one case you go fishing and in the other it just has to be indicated.

Senator POULIOT: In one case they go fishing and in the other case they go angling.

The CHAIRMAN: I would point out that Mr. Sheppard was asked to tell us his experience with respect to a somewhat similar provision in the Income Tax Act.

Mr. SHEPPARD: It had to do with searching, and that is why I made the comment I did. If you are thinking about searching under the Income Tax Act, it is only conducted under these circumstances where we have evidence of fraud, and a search warrant is obtained on the consent of a judge of the Exchequer Court. Based on that someone goes out and seizes the records, but after having seized them they do make them available to the company, if it is a company, in any way that is convenient. I mean to say, we cannot permit the documents themselves to get out of our possession because if we did the copies would not be considered as good evidence in court, as I understand it. However, we do our best to make the records available to the taxpayers, and I think that by and large there has not been any particular hindrance to their business activities as a result of that.

Senator POULIOT: There has been in some cases, Mr. Sheppard. As soon as you get a judgment of the Exchequer Court you are entitled to search?

Mr. SHEPPARD: That's right.

Senator POULIOT: And when you are entitled to search you are entitled to confiscate. I would like to know what the idea is behind the words that are used. It is the departmental officials who decide whether it is necessary to search or not, and then it is the Mounties who decide whether the property will be seized or not.

Mr. SHEPPARD: The services of the Mounted Police are merely to keep the peace. The officers of the department do all the work in connection with the search, and that is done by authority of a judge of the Exchequer Court.

Senator POULIOT: By authority of the judgment, but when the judgment is rendered it does not mean necessarily that a search is made and that the department will take possession of documents.

Senator MACDONALD: You say he cannot seize?

The CHAIRMAN: I should point out, Senator Pouliot, that there is no provision in this section for going to an Exchequer Court judge for a search warrant. Here the Minister issues an order to some persons who are in the employ of the Minister, and under that authority in writing they may enter any premises and inspect, examine, any property, including any books, records, etc., and require the owner to give them all assistance, and if during the course of the inspection it appears that an offence under the act has been committed they may seize and take away all books and records.

Senator POULIOT: I know that, but it is done in the name of the Minister.

The CHAIRMAN: Yes.

Senator POULIOT: Just the same as before a justice of the peace or in the name of Her Majesty the Queen?

The CHAIRMAN: That is right, but what I was pointing out is that this is even an easier process to invoke than having to go to the Exchequer Court.

Senator POWER: Under the Income Tax Act you at least pretend to go before the court, do you not?

Mr. SHEPPARD: What I was referring to was that in the case of income tax there is also power given to issue a search warrant.

The CHAIRMAN: But here you go in on your inspection tour, and having seized some documents, if you make up your mind an offence has been committed you seize them and take them away without going to a court.

Senator BOUFFARD: And you may question the person and force him to answer without even authority.

Senator HAIG: What happens in actual practice? They go to an office to check the books. Upon examination of the books they suddenly find Brown's mortgage entered, and that it was paid three months ago. Then they say, "Let me see the Brown mortgage"; and they find it, and it has not been reported. So they take away the books. That can happen very easily. A good many offices in my part of the world act as a semi-trust company, and people bring in their mortgages and say, "Mr. Haig, I wish you would look after that mortgage", and we enter it in the ledger, and it is put in the trust account, and at the end of the year we send the person a cheque for the principal and interest. Now, the fellow may forget it, and the only man that knows about it is the fellow who died, and when they come to check it up that comes to light and they give that report. I think it is a reasonable provision.

Senator CROLL: Of course it is a reasonable provision.

The CHAIRMAN: All I am suggesting is that if records are in fact seized I think there should be some provision for furnishing copies to the person whose records have been seized. There is nothing in this section which provides for the furnishing of copies.

Mr. THORSON: The purpose of subsection 4 is to authorize the making of copies, giving the copy the same probative force as the original, and consequently permitting the return of the original.

The CHAIRMAN: That may be the purpose, but the statute does not say that, or that the original shall be returned, and I feel that you might want to keep the originals to establish fraud or concealment.

Mr. THORSON: Exactly.

The CHAIRMAN: So I say the person should get a copy, and if you are going to make copies why not say that copies will be furnished on request?

Section 45, subsections 1, 2, 3, 5 and 6 agreed to.

Subsection 4 stands.

On Section 46—Transfer of Property.

The CHAIRMAN: This is new in part. Mr. Linton, have you anything to say about it?

Mr. LINTON: Well, it is new in so far as it is implementing an Estate Tax Act rather than a succession duty, so it is doing what another section in the old act did, section 49, but necessarily in different terms, and the penalty may be different.

The CHAIRMAN: The fine is from $100 up to $10,000. The magistrate has a wide range.

Senator CONNOLLY (*Ottawa West*): How do you arrive at a maximum?

Mr. LINTON: The maximum penalty?

Senator CONNOLLY (*Ottawa West*): Yes.

The CHAIRMAN: Well, they don't; it is the magistrate who does that.

Mr. LINTON: Do you mean why do we seize on this figure as the maximum?

Senator CONNOLLY (*Ottawa West*): Yes.

Mr. LINTON: I find it hard to answer that. All these penalty ranges were discussed and all considered in relation to each other, and an amount was put in that was felt under the circumstances arising in this section to be a fair maximum. There is no scientific basis.

The CHAIRMAN: Probably $10,000 is given as the maximum because of such an intimidating effect such an amount might have.

Senator POULIOT: No court is bound by an adjudication of the department?

The CHAIRMAN: Oh, No.

Section agreed to.

On Section 47—Consent of Minister to Transfer.

The CHAIRMAN: This would be tied in with the question of lien, and I think only for that purpose we may stand it. I think it is clear reading as to the consents that are necessary. The transfer is a property that can be made without the consent of the Minister; that is all pretty clear.

Senator HAIG: There is no change at all?

Mr. LINTON: The main changes in it are that the limits of property that can be paid without the consent of the Minister under advice have been raised. Under the old act it was $1,500 for such things as insurance policies, and $500 for such things as bank accounts. The respective limits have been raised to $11,500 and $1,500.

Senator EULER: Why the odd amount of $11,500?

Mr. LINTON: Well, the original figure was going to be $10,000, and the insurance companies suggested after they saw Bill 248 that they would have a large number of policies for $10,000 on which there would be small amounts of accruals of dividends and bonuses, and so on, so that a large number of policies which were really intended to be released by the wording would be caught by that small difference, and that is why they made it $11,500.

Senator POULIOT: May I ask a question?

The CHAIRMAN: Yes.

Senator POULIOT: In case of doubt, you give the benefit of the doubt to the department or to the estate?

Mr. LINTON: I think I would have to say that depends on circumstances.

Senator WHITE: Section 47(2) says:

> Notwithstanding subsection (1) any property passing on the death of a deceased, not exceeding $11,500 in value or amount in the case of any one transferor,...

Now if there are two policies, one each for $5,000 going to A and B, what would happen there?

Mr. LINTON: The amount of $11,500 is for each transferor of an insurance policy, that is, each insurance company, and if the two policies were in the same company, there would be a total limit of $11,500.

Senator WHITE: Let us say they were in different companies.

Mr. LINTON: Each company could release up to $11,500.

Senator WHITE: What about the liability of the executor under section 4(3)? Who is liable for that $10,000?

Mr. LINTON: The money that would be payable under this would only be payable by the insurance company to the person entitled. If the person entitled to this cash proceeds was the executor he is obviously not jeopardized in any way. If it is a named beneficiary outside the executor's control the executor is only liable for his tax up to the amount of the property that he has that would go to that successor, so it would not affect his liability.

Senator MACDONALD: I see in that instance the total tax is not chargeable against the estate.

Mr. LINTON: No, when there are outside beneficiaries who get the property direct, they are liable.

The CHAIRMAN: The intent of this section carries, but stands only because of the relationship of the lien in subsection (3).

Section 47 carried.

The CHAIRMAN: Section 48. This section deals with the consent to open or remove contents of safety deposit boxes, etc. There does not appear to be any material change in this, Mr. Linton?

Mr. LINTON: No.

Senator CONNOLLY (*Ottawa West*): In subsection 3 of section 48—I take it that that section permits the executor to go to a safety deposit box and remove such things as birth certificates, title deeds, leases, agreements and papers of that nature.

The CHAIRMAN: As a matter of practice I think it is even done now.

Mr. LINTON: It should not be done except for the will although the Chairman may be right about what is done in practice. But under this section the categories of things he can take out has been broadened. Most of these things are documents that would not affect the Crown's security or endanger the collection of taxes and yet would facilitate the administration of the estate.

Senator CONNOLLY (*Ottawa West*): Can they do it without consent to open?

Mr. LINTON: The rgeulation will prescribe that the bank, or its official as now, will represent the Minister and he will be present at the opening of the box and list these things.

The CHAIRMAN: Section 49 deals with security for payment of taxes. That is said to be new in part. To what extent is it new Mr. Linton?

Mr. LINTON: The Minister may now accept security, but it is not specified at present, that it may be by way of a mortgage or other charge. It is just made more specific.

Section 49 carried.

The CHAIRMAN: Section 50, execution of documents by corporations.

Shall the section carry?

Carried.

Now we come to section 51 which deals with offences and punishment, and this is new in part.

Shall the section carry?

Senator ASELTINE: Let us hear about it.

Mr. LINTON: It is related to sections 52 and 53 of the present act and perhaps the comparison can best be brought out as I think we did in the committee in the House of Commons by reading these sections of the act. Section 52 of the act says:

> Every person failing to deliver the statement required by section 16 is liable to a penalty of $10 for each day of default which elapses after the time limited for delivering such statement, but such penalty shall not in any case exceed $1,000.

This first subsection applies to a person failing to deliver a statement that has been demanded by the Minister, and the penalty is not less than $100 and not more than $10,000. But this is only after a demand has been made and has not been complied with.

Then subsection 2 of section 52 of the act reads:

> Every person failing to complete the information required on the forms prescribed by the Minister for reporting the particulars required by section 16 is liable to a penalty of $10 where the aggregate net value of the property the subject matter of the succession does not exceed $50,000 and to a penalty of $100 where the aggregate net value exceeds $50,000.

Those were very low penalties.

The CHAIRMAN: Yes. Inflation has taken place here too.

Mr. LINTON: Section 53 of the act reads:

> For every default in complying with the provisions of section 18 and section 20, the persons in default are each liable on summary conviction to a penalty of not less than $25 for each day during which the default continues.

The daily feature has been eliminated.

Senator POWER: Where did you get the imprisonment? Did you have it in the act?

Mr. LINTON: There was imprisonment for making false statements in the act.

Senator POWER: Now you are getting imprisonment for what? For lesser offences?

The CHAIRMAN: Under section 45 for instance if they went in to inspect a place where there were books and records and the owner was there and refused to hand over or refused to answer questions he could be charged under this section.

Senator POWER: Under subsection 2 of section 51 apparently imprisonment is provided for a term not exceeding six months and I was asking Mr. Linton if under section 52 of the act imprisonment is provided for.

Mr. LINTON: No.

Senator POWER: Well, then, this is new?

Mr. LINTON: It is for a new provision that would be contravened by a person who came under it. Section 45 is the one that discusses inspection of premises. We did not have that before and this is a penalty that flows out of it.

Senator EULER: Section 48 covers the consent to open a safety deposit box on the death of any person. To what extent do you have power to go now?

Mr. LINTON: It extends to any box in which he had any kind of ownership or lessee right and any box in which the bank knows there is property of the deceased, but if you are thinking of wives' boxes and such things it does not extend to those *per se*.

Senator EULER: The provincial law does, though.

Mr. LINTON: Yes but we never felt we could go that far. We have not that power.

The CHAIRMAN: Shall section 51 carry? This section deals with offences and punishment.

Section 51 carried.

Shall section 52 carry? This deals with certain offences. You will note that these sections have been borrowed from the Income Tax Act.

Senator POWER: Also the word "acquiesces"? Was that in the Income Tax Act?

The CHAIRMAN: Yes, "acquiesces".

The CHAIRMAN: Mr. Linton you are building up quite a barrage of authority and offences that you can throw at any violator. Will you tell us of your experience in succession duty administration in that regard?

Mr. LINTON: Our experience in the 17 years under the old act is that we do not encounter many violations but those we did encounter we were very seldom able to find any strength in the statute to do anything about.

The CHAIRMAN: I think if you find violations you should have strength.

Mr. LINTON: That is what we thought.

Senator CROLL: But we are not giving you the strength to go looking for violations though.

Section 52 carried.

The CHAIRMAN: Section 53. This section deals with communication of information.

I was curious, Mr. Linton, about a statement you made either earlier today or yesterday, and I made a mental note of it, where you spoke about examining income tax returns and seeing whether a man had indicated in those returns that he had dependants and checking them against succession duty returns. Are income tax returns available to you for that purpose.

Mr. LINTON: It is all the same department, and our office sections are so constructed that the same section of the department works on the deceased's income tax and the succession duties for the greater benefit of both.

The CHAIRMAN: Both which?

Mr. LINTON: Both taxes.

Senator HAIG: That is the best answer I have heard yet. I think you are in the Government.

The CHAIRMAN: You understand this section 53 is a long section and it is a section dealing with communication of information.

Senator CROLL: It has the same provisions as the income tax section.

Mr. LINTON: No.

Senator HAIG: It is in the law now.

Senator CROLL: Is it in now?

Mr. LINTON: It is not the same thing.

The CHAIRMAN: A lot of it is new.

Mr. LINTON: If you want a description of this, Mr. Thorson could give it.

Mr. THORSON: This deals with a lot of detail that is not presently dealt with in the Succession Duty Act. The corresponding section in the act, that is section 55, is similar in substance. However, there have been problems arise under section 55 of the Succession Duty Act, and doubts cast as to precisely what the ambit of that section is. This is merely to clarify what we regard as being the present situation.

Senator CROLL: Mr. Chairman, would you mind taking a minute to read through the section slowly.

The CHAIRMAN: I will read it.

(Section 53 read).

Senator POWER: Referring to subsection 6, as a matter of retribution, why should it be provided by section 51(2) that every person guilty of an offence is to be liable to a penalty of a fine of $5,000 and six months imprisonment, when an official faces a penalty of only $1,000 and two months?

Mr. LINTON: We hope none of our officials will ever—

Senator POWER: And we hope none of our taxpayers will either.

Mr. THORSON: It is a case of the punishment fitting the crime.

Senator CONNOLLY (*Ottawa West*): Under subsection 5, does the authority in writing mean that a solicitor, for example, who goes to court to discuss a tax matter on behalf of a client, must bring a letter from the client showing that he is authorized to act?

Senator CROLL: He always did that.

The CHAIRMAN: That is the practice in the Income Tax Department.

Section 53 agreed to.

On Section 54—Officers of corporation.

The CHAIRMAN: That provides that if a corporation is quilty of an offence under this act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the crime, is a party to it. In other words, the department in its prosecution can be highly selective, and if there is a wealthy director, they can go after him and forget about the company. I think they need the broadest power.

Senator ASELTINE: The company would look after the director.

Section 54 agreed to.

On section 55—procedure and evidence.

The CHAIRMAN: What procedure are you talking about in that section, Mr. Linton?

Senator CROLL: That is an unusual way of drawing a statute, by saying that the procedure in another statute will be applicable to this one.

The CHAIRMAN: I agree.

Mr. THORSON: If I may answer that, the provisions of section 136 go on for a considerable number of pages and contain some 14 different subsections. This is an attempt to avoid the very long repetition of having that portion re-enacted in this bill.

The CHAIRMAN: Of course I am more concerned as to why it is regarded as being necessary to this statute, that this long and repetitious procedure should be mentioned. Why do you need it?

Mr. THORSON: Do you wish an analysis of section 136?

The CHAIRMAN: No.

Mr. THORSON: This is considered to be a useful section dealing with matters pertaining to evidence.

Senator CROLL: Someone new who reads the act, has to go back to the Income Tax Act. I am not quite sure that he would understand. I realize what you are trying to do here.

The CHAIRMAN: There would be one other way, but an unusual way, and that is the provisions could be appended as a schedule to this act.

Mr. THORSON: That is quite true, Mr. Chairman. You could even re-enact them into this act, but this procedure is an attempt to avoid the re-enactment of these many pages of provisions which we did not feel could conveniently be included.

The CHAIRMAN: For such an important statute as this, do you not think it should be self-contained?

Mr. THORSON: I feel these provisions are subsidiary to the main point in the bill, and are purely mechanical.

Senator CROLL: Can you think of any similar legislation where that situation applies?

Mr. THORSON: There are a number of different statutes; I would hate to be pressed to name them.

Senator CROLL: Don't say there are a number; think of one.

Mr. THORSON: Dr. Eaton suggests that the Old Age Security Act contains reference to provisions of the Income Tax Act.

Dr. EATON: That is they are deemed for certain purposes in income tax to be in this act. It is a separate tax imposed as social security tax, and in both the Excise Tax Act and the Income Tax Act they are dealt with and referred to as taxes in the other act.

Mr. THORSON: It is not an uncommon device.

Senator CROLL: Very well.

Section 55 agreed to.

On section 56—agreement with provinces
agreement with other countries

The CHAIRMAN: Section 56 deals with authority to make agreements with other Governments, not only provincial governments, but foreign governments.

Mr. LINTON: That is right, Mr. Chairman. We have now introduced into the act credits for foreign taxes without waiting for treaties to implement them. This is a step that was taken in the treaties in the matter of exchange of information. This now can be done within the terms of the act, without the treaties being negotiated and introduced by an over-riding act.

The CHAIRMAN: I wonder if this is the place to raise the question that has been raised in our house whenever tax conventions come before it, that the provisions with regard to the exchange of information, where a foreign country is seeking evidence in Canada in relation to one of its subjects and his operations in Canada for the purpose of supporting the prosecution or proceeding for tax violation in the foreign country. In other words, we make available in Canada the records of a taxpayer's operations here who may be a citizen of another country, available to that other country, so that they may, in their country, go after him either for taxes or by prosecution. There has been a lot of complaint in our House about it, but the obvious answer to it is, "the agreement has been signed and executed, and there are only two things you can do, either approve it and pass the bill, or reject it. It has been negotiated; you cannot undo it." I wonder whether this is the place where we could put in some appropriate language. What would you say, Mr. Linton?

Mr. Linton: We get great advantages out of this exchange of information. It is not only the other country who gains advantage by pursuing its taxpayers with information we provide, but we gain from information they provide, both in pursuing our taxpayers and in pursuing their taxpayers who have Canadian property and neglect to declare it.

The CHAIRMAN: But if the foreign authority comes into Canada and, under the protective wing of the Canadian authority makes its examinations of records here that always seems to be a—

Mr. LINTON: As far as I know they never come here and examine our records. We give them advice; we answer questions they may ask. There may have been very rare occasions when in some specific case there may have been some discussion on the premises, but for their investigators to examine our records. I don't know that it has ever happened.

An Hon. SENATOR: Have you ever made a seizure on their behalf?

Mr. LINTON: No.

Mr. SHEPPARD: I was going to say that I do not think the exchange of information goes quite as far as you have stated, Mr. Chairman. They are entitled to the information we would have for the purpose of our act. But that does not give them the power to come in this country and make an examination.

The CHAIRMAN: I was looking at the Succession Duty Convention with the United States, and I noticed these words:

"With a view to the prevention of fiscal evasion, each of the contracting States undertakes to furnish to the other contracting State, as provided in the succeeding articles of this convention, the information which its competent authorities have at their disposal or are in a position to obtain under its

revenue laws insofar as such information may be of use to the authorities of the other contracting state in the assessment of taxes to which this convention relates."

When I spoke about their coming in, I was talking about the practice. It may not occur too often, but I have run into it once or twice. True, one was under the Securities Commission, but on another occasion it was something else, which I prefer to leave anonymous at the moment; and I would not want the practice to go that far. I think it is going far enough. That is a mild way of putting it.

Mr. SHEPPARD: I think the meaning of the clause there is that they have the right to get anything that we have the right to get in the normal pursuit of information for our own purposes.

Mr. LINTON: And not that they can get it for themselves.

Senator CROLL: I missed that. Do I understand that, unless we have good reason to go out and get it for our own purposes they cannot get it?

The CHAIRMAN: That is not what the section says. The section says it is information which, for instance, the Canadian authorities might have at their disposal or be in a position to obtain under their revenue laws.

Senator CROLL: That is the small print you are talking about. I am talking about the large print. It does not say that.

The CHAIRMAN: I think anything you can ask for under our law you can be asked to give to them.

Mr. SHEPPARD: You can't very well go and ask for information without a reason for getting it.

The CHAIRMAN: I am talking about the authority you have. Administration is something else.

Senator CONNOLLY (*Ottawa West*): Does not that go so far as to permit them to make a seizure?

The CHAIRMAN: Oh yes.

Senator CROLL: Oh no, not a foreign country.

Mr. LINTON: They cannot do it.

Senator CROLL: They can't make a seizure. Our own department can't make a seizure on their behalf.

Mr. SHEPPARD: There can only be a seizure if there is an offence under our own act.

The CHAIRMAN: You are so optimistic, Senator Croll.

Dr. EATON: It is no comfort to you, but I have negotiated a good many of these treaties, and every home government feels exactly the way you feel, but they all do it.

The CHAIRMAN: I know. Here I am doing it now!

Now you have the provision with respect to regulations, in Section 57. I suppose if this thing is going to operate, you have to let them make some rules. Carried.

Now then, Part IV, Interpretation and Application. Well, that is the definition section. Is there anything in here, Mr. Linton, that you want to direct our attention to?

Mr. LINTON: New definitions. They do not necessarily mean anything new as far as the tax is concerned. There are more definitions here than there were in the old act,—such things as "amount", which is purely mechanical, was not defined before: "Assessment", included reassessment, "Corporation controlled by the deceased". I think, in going through the other sections, we have seen the effects of that, and we have had reference to this definition on at least one occasion.

The CHAIRMAN: In Section 9 you are dealing with provincial taxes, and you speak of property situated in a "prescribed" province. Then you say what the word "prescribed" means; it means prescribed by regulation. Then I come to the interpretation section, and I see the word "prescribed" as, "in the case of a form or the information to be given on a form, means prescribed by the Minister". I still do not know what they mean by "prescribed", because in Section 9, when they talk about a "prescribed province" I don't know what moves the Minister to designate a province.

Mr. LINTON: I think the "prescribed province" is by the Minister of Finance, whereas these definitions in the end of the Act refer to those of the Minister of National Revenue.

The CHAIRMAN: This "prescribed" as it occurs in the definition section has nothing to do with the word "prescribed" as it occurs in Section 9.

Mr. THORSON: That is correct. Of course you read any definition in the act subject to the provisions of the Interpretation Act, which says the definitions apply unless the context otherwise requires. In Section 9 the context does otherwise require.

The CHAIRMAN: I am curious about this word "prescribed". It is referring to a previous section, but I do not think anyone reading this act would know what province was likely to be prescribed to come in the category of a prescribed province. How do I find that out? What is there that impels the Minister of Finance to prescribe any province by regulation?

Senator THORVALDSON: The fact is that the prescribed provinces are the ones that are not under the tax agreements.

The CHAIRMAN: But where is that set out in the bill? There is nothing in the bill that says the prescribed provinces are the provinces who have not joined in the tax rental agreements. Therefore, I say that the Minister has full discretion and can designate or not designate as he likes.

Mr. THORSON: I would suggest that the Minister of Finance would be a very brave minister indeed if he prescribed a province other than the ones that have not joined in the agreements.

The CHAIRMAN: That may be a debating answer but let us get down to the facts of the case. If we are drawing a bill as important as this bill, and we are giving a provincial tax credit, it is certainly important to the people who live in those two provinces and who believe they are going to be designated; and there is nothing in the bill that says the Minister does not have to do it.

Mr. THORSON: That is quite true, Mr. Chairman. The reason the expression is used is that it is common terminology in the taxing statutes of Canada generally to speak of a prescribed province in this context. For instance, you have a reference to a prescribed province in sections 33 and 40 of the Income Tax Act. The term is used in order to provide flexibility where an agreeing province becomes a non-agreeing province or where a province not previously an agreeing province becomes one.

The CHAIRMAN: As I understand it now a prescribed province would be such province or provinces as from time to time—

Senator CROLL: That's a little rough. I think you are right, Mr. Chairman, in this case, but let's pass the section.

The CHAIRMAN: I don't think I am being rough at all. I am just being reasonable.

Senator CONNOLLY (*Ottawa West*): What does section 58(1) (m) mean?

Mr. LINTON: I don't know that I can say what it means any more than reading it. I don't get the difficulty, I am afraid.

Senator POWER: It is not a matter of any difficulty. Senator Connolly wants to know why we are elevated to the status of officers.

Mr. THORSON: I would refer you to the definition of "employee". Here an officer is equated to the status of an employee, and in those provisions where an employee is referred to in the act you may read into that same provision the definition that you find in paragraph (m) of subsection 1 of section 58, of the expression "officer".

The CHAIRMAN: You are going further in this act than you do in the Income Tax Act, in which you say an employee includes an officer but you don't say an employee includes a director.

Mr. THORSON: Yes, I believe in the Income Tax Act the expression officer is defined to include these various other persons.

The CHAIRMAN: Well, I hunted for it and I could not find it. Perhaps I was not reading it right.

Senator WHITE: Mr. Linton, I would refer you to section 58(2) on page 46 of the bill, where you define the meaning of "child". You say this includes an illegitimate child. What about a case where a person who dies intestate has an illegitimate child? Under section 7 there is a basic exemption of $10,000. Just what would happen there?

Mr. LINTON: This would apply to the illegitimate child who inherits. It would have no application if he was not a successor. If he is a successor he is treated for all purposes as a legitimate child.

Senator WHITE: It does not mention anything about the illegitimate child being a successor here.

Mr. LINTON: No.

Senator WHITE: Well, if under section 7 a child includes an illegitimate child, and then in the case of an intestate in a province where an illegitimate child does not inherit, you would still have the $10,000 deduction?

Mr. LINTON: Oh! I see. I'm Sorry. Yes, relating this definition to section 7 the children's exemptions would arise when there was an illegitimate child whether he inherited or not.

Senator WHITE: How did you allow that to get in there?

Mr. LINTON: We thought it was fair that way.

Senator EULER: Does an adopted child qualify?

Mr. LINTON: Yes.

Senator BOUFFARD: It does not apply to grandchildren.

Mr. LINTON: No, unless they happened to fall within the category of someone who has legally or in fact under the custody and control of the deceased.

The CHAIRMAN: Any other questions on the definition section?

Senator BOUFFARD: I think you intend to stand paragraph (s).

The CHAIRMAN: Then shall section 58, subject to paragraph (s) standing, carry?

Hon. SENATORS: Carried.

Section 58, except for paragraph (s), agreed to.

On Section 59: Application of act.

The CHAIRMAN: These provisions are all formal and technical. As I understand it the Dominion Succession Duty Act is not going to be repealed. It will continue, I suppose, for an indefinite period of time?

Mr. LINTON: That's right.

Senator POWER: What did you say?

The CHAIRMAN: I said that the Dominion Succession Duty is not going to be repealed.

Senator POWER: Even after this is proclaimed?

The CHAIRMAN: No.

Section 59 agreed to.

On Section 60: Coming into force.

The CHAIRMAN: I would like to ask a question before this carries. Can anyone of you tell me when it is planned that this statute or any law based upon this bill will be proclaimed or come into force? Is there any indication?

Mr. LINTON: I think we can only say what the Minister said in some other place, that it would not be for some months.

The CHAIRMAN: I think there was a suggestion somewhere that it would be January of 1959.

Mr. LINTON: There has been no official suggestion of that as far as I know.

Section 60 agreed to.

Senator HAIG: I move that we adjourn.

Senator MONETTE: Mr. Chairman, before we adjourn, I have here the text of a new subsection which I propose, to provide that any sections of this act shall not affect the community share of a surviving spouse when the husband or wife dies. When section 4 of the bill is considered, I would amend the section by adding subsection 4, to read as follows:

> Notwithstanding anything in this act, the share of the surviving spouse in the community of property that existed between such surviving spouse and the deceased immediately prior to the latter's death shall not be included in determining the property passing upon the death of the deceased.

The CHAIRMAN: We have already prepared a draft, a copy of which is in the hands of the Minister, but in case your draft might be different, we should have it also.

Senator MONETTE: Yes.

Whereupon the committee adjourned.